







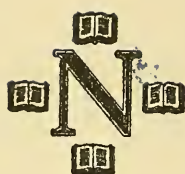








**THE SOVEREIGNTY  
OF THE STATES**





# THE SOVEREIGNTY OF THE STATES

## *AN ORATION*

ADDRESS TO THE SURVIVORS OF THE EIGHTH  
VIRGINIA REGIMENT, WHILE THEY WERE  
GATHERED ABOUT THE GRAVES OF  
THEIR FALLEN COMRADES, ON THE  
BATTLE-GROUND OF MANASSAS  
JULY 21, 1910

BY  
WALTER NEALE



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## PREFACE

IN these days orators refer to their "addresses," or they refer to their "speeches." Poets in these days speak of their "verses," or they speak of their "rhymes." Thus orators and poets intend to be modest; thus they try to escape ridicule. The affairs of the world may not be conducted by a medium more effective than oratory, by which nations have been built, and by which right has ever been defended; man may not find expression by a medium nobler than poetry, which has ever been the greatest force in literature. Yet unthinking men in these days so ridicule orators and poets that the existence of oratory and poetry is threatened. The man who refers to his oration as an oration is no more immodest than the man who refers to his novel as a novel; the man who describes his poetry as poetry is no more immodest than the man who describes his song as music. In doing so neither asserts that his work equals the best of the masters of his art.

## *Preface*

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The fact that there are incompetent workers in oratory and in poetry, as in all the affairs of men, does not supply proper motive for the debasement of two noble arts.

This account of the sovereignty of the states is an oration. So it is called.

WALTER NEALE.



# THE SOVEREIGNTY OF THE STATES

## I

### THE AMERICAN KINGDOMS

FROM 1578 TO 1783

*Survivors of the Eighth Virginia Regiment,  
Prince William County Chapter of the  
United Daughters of the Confederacy, and  
all others that are here gathered on the  
battle-ground of Manassas to honour those  
who fought to preserve the rights of the  
American nations:*

SOLDIERS of the Eighth Virginia Regiment,  
the war is not over, not yet may you unbuckle  
your armour: take up the arms that you laid  
down at Appomattox, then on to the front, for  
the hardest of the fighting is yet to be done.

In 1861 the American nations submitted  
one question only to the arbitrament of arms.  
That question was answered in 1865, on the

ninth day of April, the saddest day known to Virginians, when the court of last resort decided that no nation a party to the treaty of 1788 and its amendments should be permitted to withdraw from that compact; but that same court, the highest of tribunals, then decided that the rights of no nation should be otherwise affected. In construing the terms of the agreement in one respect only did opinions differ.

As the victors fought for the perpetuation of the treaty,—in all its provisions, as interpreted by them,—the decision met with their entire approval. The defeated countries lost but one of their rights, while all their other rights were to be theirs for ever. Each fought that her sovereignty might be hers for ever, and each was assured that never should her sovereignty be placed in jeopardy. Thus the defeated countries were victorious in defeat.

But, Soldiers of the Eighth Virginia Regiment, the decision of the court of last resort has been disregarded by the victors. They have violated the terms of surrender by which you were induced to lay down your arms, for one by one the rights of the de-

feated nations have been taken from them. The terms of surrender signed, sealed, and delivered, the defeated peoples hoped that they would be permitted to exercise at least a few of the powers of sovereignty.

A vain hope! The War of Reconstruction, the most horrible of all modern wars, was forced upon them by their victors. They were to pay billions as indemnity under an infamous pension law; they were to pay billions as an indemnity under an iniquitous tariff. They were to see a vast republic made of the American nations; they were to see that republic enter upon wars of conquest in distant lands. They were to see Cleveland tear down the flag that had been raised in dishonour; they were to see McKinley assassinate the treaty that he had fought to perpetuate. Yes, they were to see McKinley assassinate the treaty that he had fought to perpetuate, for they were to see him replace the flag that Cleveland had torn down, his face livid with shame the while. They were to see shrieking mobs, drunk with imperial power,—tasted for the first time,—gather about the flag that dishonoured the heavens, while above the uproar they were to hear the

more coherent among the rabble shout: "Let the flag stay put! Get out, you little Americans! the flag once planted shall wave for ever!" They were to hear a trumpet sounding throughout the world: "Awake, nations of the earth, the peoples of sovereign powers have become the American people!" They were to see the vast American republic evolve into a powerful empire, with a president for king; they were to see that empire become a despotic monarchy. They were to see the highest court of the communities that once were nations become the lowest court of the new monarchy; they were to see the members of the highest court of the new monarchy become the minions of the despot. They were to see American legislators the despot's lackeys. They were to see the communities that had been sovereignties with no right save the rights that the despot was pleased to grant them from time to time. They were to see the American despot become more powerful than the Russian czar.

The ruler that is now on the American throne—the second that Ohio has supplied to the American monarchy within a single decade—intends to tax directly the persons

that live in the communities that once were nations. More than half the members of the despot's highest court rebel, refusing to permit him directly to tax his subjects; so the despot intends to pacify the rebels by going through the form of adding a section to the compact of confederation that is still supposed to bind the communities that were once sovereignties. The despot is to be permitted directly to tax the income of his people.

If there be a single defect in this vast monarchy, it is the veneration in which many of the people still hold the old treaty of 1788 and its amendments. Once let that document give the American despot the moral right to tax his subjects, and Anglo-Saxon civilisation in America shall be no more. Almighty God, forbid!

Virginians, since the nations that you fought have violated the agreement under which you laid down your arms, I implore you,—I command you,—take up your arms, and let every man of this old commonwealth be gathered to his fathers rather than die a slave.

. . . . .

Let us briefly review the lives of the Amer-



ican nations that became parties to the treaty of 1788 and its amendments. The fault will be mine if I do not show that each was a sovereignty from 1578, when Elizabeth issued a patent to Gilbert, until 1865, when eleven failed to maintain their rights. As the powers of the American nations did not differ essentially between 1578 and 1865, the greater part of our review will be devoted to Virginia, that time may be saved.

#### GENESIS OF THE AMERICAN NATIONS

During the reign of Edward III England was devastated by the worst disease known to man. Large tracts of her territory were left uninhabited, and not until the greater part of her people were in their graves—or their bones were bleaching on her highways—had the disease run its course. But the black death was not an unmixed evil. Never able to supply food to a large population, England could not at that time feed her five million inhabitants. A large part of her people faced starvation when death came to them in a more hideous guise.

The loss in population having been regained



during Elizabeth's reign, once more famine threatened the people, who could find no relief within the boundaries of the realm. For want of work tens of thousands were idle. Occupation had to be found for the unemployed, or a dynasty would fall; nor should England become a power of first rank until she should find an abundance of food. Already her wise men were saying that she should soon be seized by the Spaniards. Without bread the English people could not live.

So the petition of the brave adventurer, Sir Humphrey Gilbert, that a patent be issued to him for land beyond the seas, was heard by sympathetic ears. As Elizabeth saw, here was an opportunity to establish a nation of her own blood and bone, which would take from England her surplus population, supply her with food, and constitute a market for her merchandise. Moreover, already England saw that her sovereignty was in the keeping of her navy, and she also saw that her navy would be ineffective without stations in various parts of the world. Thus her existence was dependent upon her commerce, her commerce was dependent upon her navy, and her navy was dependent upon

friendly distant lands. In 1578 Sir Humphrey Gilbert, his patent in his pocket, sailed from England, intending to found a nation in the American wilds.

Elizabeth and her advisers knew that England could govern no distant people. At best she could bind them to her by the golden chains of love; nor have any chains other than love ever bound the English peoples to one another and to the mother country. No other chains have ever bound two peoples—or more—of an ancestor common to them, when separated by water, nor ever will. Those golden chains have ever been the strength of England. To-day the great system of nations that comprise all the peoples that speak the English language are bound by the same chains. There are nations now that would do well to imitate the wisdom of England as expressed by her more than three hundred years ago, when she granted to her people the right to found nations in the American forests.

One of Humphrey Gilbert's seven ships was commanded by his half-brother, Walter Raleigh, then a youth of twenty-six. The fleet fought the Spaniards on the high seas, and

probably suffered severely, for the expedition went back to England. In 1583 the dauntless Gilbert again set sail, and again his attempt to reach America failed, this time owing to a violent storm, which sent the commander to the bottom of the sea. The gallant Raleigh, who had been too much engaged in paying court to his beautiful sovereign to accompany the second expedition, proved to be his half-brother's worthy successor. In 1584 the patent that had been granted to Gilbert was renewed in the younger man's name. However, a permanent settlement was not established until May 13, 1607, when the travail that began when Elizabeth handed Gilbert's patent to him in 1587 was ended—the nation Virginia was born.

#### FROM 1578 TO 1609

Under a provision of Gilbert's patent, renewed by Elizabeth in 1584, Raleigh acquired the right to "hold by homage remote heathen and barbarous lands, not actually possessed by any Christian prince, nor inhabited by Christian people, which he might discover within the next six years." The patent also

provided that the people of each of the new lands "should have all the privileges of free denizens and persons native of England, in such ample manner as if they were born and personally resident in our said realm of England," and still further the patent provided that the peoples should have the right to govern themselves so long as their laws should "conform as nearly as conveniently may be with those of England, and do not oppugn the Christian faith, or anyway withdraw the people of those lands from our allegiance." Says John Fiske, a more unequivocal acknowledgment of the rights of self-government would be hard to find.<sup>1</sup>

While the patent provided that the head of the British nation also should be the head of each of the American nations, the sovereignty of none was affected by that provision. Two countries or more may acknowledge a king common to them all, yet each be a sovereign entity. For example, if China, Germany, and Russia each was to call an American to her throne, that course would not effect the amalgamation of those nations, nor would

<sup>1</sup> John Fiske, *Old Virginia and Her Neighbours*, in 2 vols., vol. i, p. 31.

they become thereby colonies of the American monarchy; but each would be governed by her own laws, which would be executed by a king of her own selection, hence she would continue to be a nation. While the civilised countries of the world owe allegiance to Almighty God, and to some extent are governed by His laws, the sovereignty of none is thereby affected. Although the head of Virginia's government was to live in London, nevertheless she was to be her sovereign self, with all departments of her government administered by persons of her blood and bone.

A nation consists of persons that are organised under one civil government. Ordinarily a nation is the sole occupant of a territory within definite bounds, but not always, for several nations may inhabit land that is common to them all. In America, for example, the Caucasian nations and the Indian nations formerly occupied land that was common to them. If sovereignty be power to exercise supreme authority, no nation has ever been sovereign, for the nations of the world, constituting one great human family, compel one another to observe laws for the



common good. No nation even has had a government with power to exercise unrestrained authority over her own people.

Unless the definition of "nation" and the definition of "sovereignty" are borne in mind constantly, often we shall be confused during the course of this oration.

In 1603 James I ascended the English throne, sent the noble Raleigh to prison, took his patent away from him, then put it into the kingly pocket.

The charter under which Virginia became a nation, issued by James I, divided England's American dominion into two parts. The territory lying between the thirty-fourth and the forty-first parallels—that is, between the present capital of South Carolina and the present capital of New Jersey—was to be occupied by a commercial organisation, while another commercial organisation was to occupy the dominion lying between the thirty-eighth and the forty-fifth parallels—that is, between the Potomac river and the St. Lawrence river, not to be exact. Thus the wily James issued patents to a part of his dominion to more than one political body—for the commercial companies really were political



bodies. In time this territory was divided into several parts, then sold by the king.

So far as the sovereignty of each of the American nations was concerned, the charter under which the first permanent settlement was established did not differ materially from the patent that Elizabeth had issued. While a royal council consisting of thirteen persons, to be appointed by the king, was to advise them, each nation was to govern herself. They were each to be governed by a council, to consist of thirteen persons, one of the members to be president, who was to have a casting vote, and who was to be elected each year by the council. Among the duties of the council was to fill its own vacancies, dismiss the president from his office in case of misconduct, and to deport undesirable foreigners.

Each of the American nations was to be as sovereign as the mother from whose womb she was to leap. Fiske says that the authority of the councils was supreme, although their acts were liable to a veto from the king. As we shall see, the king, as the head of each American government, could exercise the powers of his office without affecting in the least the sovereignty of the American peoples.

Virginia was entirely satisfied with her form of government and the way that it was administered. She proceeded to coin money, punish offenders, raise revenue by taxation, and to regulate her trade with foreign nations. That she might defend her people she organised an army of her own citizens, commanded by officers of her own selection, and her people were further defended by a navy of her own construction, manned by her own citizens.

A nation is never made of a piece of parchment. Although the American nations were sovereign when their lands were first settled, the sovereignty of each had to be maintained by sweat and by blood. Within forty years from the time that James I ascended the throne the American nations were prepared to defend their sovereignty against the world. Time and again each had fought for her life, and always her armies had been victorious. By sweat and by blood the American nations within forty years from the time they were first permanently settled had earned for themselves high places among the sovereignties of the world.

During the early years of the seventeenth

century no nation could have waged war successfully three thousand miles from home. Suppose that a power beyond the seas, braving the dangers of a vast unknown continent inhabited by hostile Indians, defended by a government with a trained military force, had successfully invaded Virginia, could the invader have long enjoyed the fruit of her victory? Not so.

As a nation is sovereign so long as she exercises the powers of sovereignty, one may not say that Virginia was not sovereign because she might have been taken by some European state. To argue to the contrary would be to contend that no nation is sovereign, inasmuch as no nation exists that may not be overcome by some adversary, nor has any nation ever existed that might not have fallen under the assault of the combined nations of the earth. Switzerland is a sovereign state, although she might be held in Russia's right hand. Virginia was not successfully invaded, nor was her national existence affected for a moment; so we may not say that she might have lost her sovereignty through invasion.

## FROM 1609 TO 1624

On May 23, 1609, a new charter was granted to the London company. In annulling the old charter James I declared that, while the first commercial company had been deprived of its privileges, the sovereignty of Virginia was unimpaired, and he further declared that the new charter did not deprive Virginia of any of her territory. Similar declarations were made by Charles I. To enter into a detailed account of the government under the new charter is not necessary in this oration, so I merely say that Virginia continued her sovereign existence, fighting out her national destiny with axe and hoe and sword. By 1612, the year that the London company obtained its third charter, Virginia had taken off her swaddling clothes.

Under the new charter the government expanded. The House of Burgesses assembled July 30, 1619, obedient to the writs of election that Governor Yeardley had issued. Eleven election districts were represented, each by two delegates. The first parliament to assemble in America thereafter convened at stated intervals until 1776, a year after the

fight at Lexington. So early as 1624 the assembly declared that the governor, the representative of Virginia's king, the king of her choice, should not tax the people against the will of the Burgesses, the representatives chosen by the people to make their laws.

Says Major Steele, referring to the American kingdoms: "About the only real bond that tied them to the authority of England was the colonial governors, but they were dependent upon the behest of the colonial legislatures for their pay; so their vetoes were easily bought off. Of a truth, the provincial legislatures brought the governors to terms, by refusing to vote their salaries."<sup>2</sup>

Continuing, Major Steele in the next paragraph says: "There were customs laws and various other laws for taxing the colonists; but all of them were ignored."

In 1622 the population of Virginia was fully 4,000, while her people were wealthy. By that time several of the mansions for which Virginia is famous had been erected, and the homes of many of the workmen were so substantial that a few of them are still to

<sup>2</sup> Matthew Forney Steele, *American Campaigns*, 2 vols., Washington, War Department, Office of the Chief of Staff, Document No. 324, vol. i, p. 21.



be found in a state of excellent preservation. All the people enjoyed an abundance, all were happy, all worked hard, all enjoyed liberty in full measure—the liberty that is not license.

#### FROM 1624 TO 1776

The downfall of the London company was brought about by James I in 1624. Although the assembly that had been elected by the people and the governor and the council that had been appointed by the throne were entirely satisfied with the relations existing between the Virginian government and the British government, and frequently had given expression to that satisfaction, and more than once had said that the company ably represented Virginia's king, nevertheless his majesty decided to withdraw the authority that he had delegated to the company, and soon wielded his kingly power over all the subjects of his American realm. He personally appointed Virginia's governor and the members of her upper house, known as a council; then warned his British parliament and his British privy council that the affairs of his American kingdoms were no part of



their proper concern, that he did not need their assistance in exercising his duties as king of his realms beyond the seas. He broadly hinted that the commercial body should no longer exist.

The company contended that James had no power by which he could annul the charter, which had become a valuable vested right. The argument of the attorney-general in the *quo warranto* proceeding that was brought before the Court of Kings Bench was worthy of his profession. The charter, he said, permitted the company to carry the king's subjects across the seas to Virginia; therefore, if the company should convey all Englishmen to America, the king would be left without subjects in his British kingdom. The court was convinced; the charter was annulled.

The sovereignty of the American nation had not even been placed in jeopardy by the downfall of the company, and "self-government in Virginia," says Fiske, "went on to take root more deeply and strongly than before."<sup>3</sup>

#### VIRGINIA'S GROWTH NOW RAPID

The growth of Virginia was rapid. Courts

<sup>3</sup> Fiske, vol. i, p. 222.

that held sessions monthly were established, and soon a great judiciary system was perfected; the nation was divided into military districts, with every able-bodied man a trained soldier, his arms always within his reach; all industries necessary to Virginia's existence as a sovereignty were developed, while a single agricultural product, tobacco, alone was sufficient to make her people the wealthiest of the world; her ships, which also constituted a powerful navy able to protect her commerce,—for every ship was heavily armed,—carried her products to all parts of the world, while her policy of free trade, which is still her policy, added to her wealth as well as to her honour. Her planters became kings, her merchants became princes, and her labourers became barons. Although a banking system did not exist in Virginia until 1804, her fiscal systems were as nearly perfect as those of any other nation.

A table that shows Virginia's money in present American values, compiled by a Virginian writer,<sup>4</sup> is so important in a consideration of the sovereignty of the states, that I now repeat it:

<sup>4</sup> J. W. Eggleston, *Tuckahoe*, p. ix.

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Fourpence-half-penny or "fo'-pence-a'-penny" \$	.06 $\frac{1}{4}$
Ninepence .....	.12 $\frac{1}{2}$
Shilling .....	.16 $\frac{2}{3}$
Eighteenpence .....	.25
Two-an' threp-pence (threepence) .....	.37 $\frac{1}{2}$
Three-an'-ninepence .....	.62 $\frac{1}{2}$
Four-an'-sixpence .....	.75
Seven-an'-sixpence .....	1.25
Nine shillings .....	1.50

While there was no Virginian pound, the term nevertheless was often used. Mr. Eggleston errs when he says that the only instance in which reference was made to the pound was in 1850, when the code of Virginia provided that the governor's salary be 1,000 pounds, the governor drawing in satisfaction of his salary 3,333 American dollars and 33 American cents. The term pound was used oftener than the term dollar until long after Virginia ceased to be a kingdom, while often at this day one may hear a Virginian say, "Not a pound will I give you for that beast."

Nor were the fine arts neglected, nor science. So early as 1621 provision was made for a great public free school system,—the foundation of the system that Jefferson perfected,—and about the same time various subscriptions were made to a fund that was to be used in establish-

ing a great national university. The College of William and Mary, erected in 1692, the result of the movement that began in 1621, may be ranked among the great educational institutions of the world. Again Fiske emphasises Virginia's sovereignty, saying that she had managed "her own affairs in almost entire independence of the British government" for more than fifty years. Continuing, he says: "As the situation was left by the death of James, so it remained without essential change until 1776. The House of Burgesses was undisturbed, but the governor and council were henceforth appointed by the crown. . . . The change from governors appointed by the company to governors appointed by the crown was a relaxation of the supervision which England exercised over Virginia. For the company could devote all its attention to the affairs of the colony, but the crown could not. Especially in such reigns as those of the two Charleses, the attention of the crown was too much absorbed with affairs in Great Britain to allow it to interfere decisively with the course of events in Virginia. The colony was thus in the main thrown back upon its own resources, and such

a state of things was most favourable to its wholesome development.”<sup>5</sup>

Fiske would not have been confused had he known that Great Britain and Virginia were nations independent of each other, acknowledging allegiance to a sovereign common to them both. Of course the king exercised his authority through the governors that he appointed. They were not the emissaries of a foreign potentate, but officers of a sovereign of Virginia's own selection. Nor was Virginia's king the British government—not by several games of cricket.

By 1649 Virginia's population had increased to 15,000 Caucasians and 300 negroes. Charles I was put to death during this year. The event aroused the subjects of his American kingdom to great indignation. However, his death did not affect the sovereignty of the American nations in the least; but, as we shall see, Virginia exercised a power of sovereignty during the Commonwealth period among the highest that a nation may exercise.

Virginia's population and her wealth continued to increase. In 1670, several years after the fall of the Commonwealth, while

<sup>5</sup> Fiske, vol. i, pp. 238-239.



Charles II was on the Virginian throne, her population had increased to 38,000 Caucasians and 2,000 negroes. The authority of the king, defied for several months during 1676,—while a government republican in form was maintained by the first American rebel—was reestablished by the Virginian people, who overthrew Bacon's government without the aid of any other people. National development continued with great rapidity.

In 1750 Virginia's population, as estimated by Smyth, consisted of 250,000 Caucasians and 250,000 negroes.<sup>6</sup> So Virginia then was indeed among the powerful nations of the world.

According to the first federal census (1790), Virginia's population consisted of 454,183 Caucasians and 293,427 negroes; or, exclusive of Indians, her total population was 747,610. After consulting several authorities, I estimate that in 1776, twenty-six years after Smyth made his estimate, and fourteen years before the first federal census was taken, the population consisted of about 420,000 Caucasians and about 250,000 negroes. In view

<sup>6</sup> Smyth, *Tours in the United States*, London, 1784, vol. i, p. 72, quoted by Fiske, vol. 2, p. 191.



of the first census, evidently Smyth's estimate of the negro population was too high, while probably his estimate of the white population was too low. Few persons settled in America between 1776 and 1790, and few negroes were brought to any part of the continent during those years.

During this period of Virginia's growth, all the American nations fared well so far as their sovereignty was concerned. Several besides Virginia at this time were powerful countries. For example, in 1790, the population of Massachusetts, one of the small nations, was 387,787, exclusive of Indians, but including slaves.

#### THE POWHATAN WAR

The highest power of sovereignty that a nation may exercise is the ability successfully to wage war. Not only did Virginia unassisted fight out several wars between 1607 and 1865, in which she was victorious, but she also dictated the terms of peace. During this period she fought foreign countries, European as well as American, and Indian nations occupying her own territory. More than once

she engaged in civil strife. As a world power, acting within her own sovereign rights, she entered into treaties with other great world powers, including the united kingdoms, for when she made a treaty with Cromwell's government the articles were signed by Cromwell's commissioners on behalf of England and by Virginia's council on behalf of Virginia, "as equal treating equal," an assertion of sovereignty that Great Britain did not dispute.

To review all Virginia's wars is not necessary in this oration, but I shall refer to several.

In 1622 the Powhatan nation made war upon Virginia. So severe was the fighting that she lost about nine per cent. of her population. However, three Powhatans probably gave their lives in payment of every life that they took. The terms of peace were dictated by Virginia, and a treaty was made between the two nations.

#### THE WAR BETWEEN MARYLAND AND VIRGINIA

The king did not always keep his word. That part of Virginia's territory now known

as Maryland became an independent nation through the treachery of a king who was not always just while governing several nations at the same time. Many rulers have found it difficult to govern one nation, so we should forgive the mistakes made by Virginia's liege lord, I suppose. A state of war soon existed. Maryland having taken possession of Kent Island, a part of Virginia's territory, and inhabited by her citizens, William Claiborne, the Virginian secretary of state, in 1633 demanded of Maryland's sovereign, who was also the British king, that he take his Maryland subjects from Virginia's territory. Whereupon the king commanded Lord Baltimore to withdraw from Kent Island. The command was not obeyed.

I have intimated that John Fiske did not know that Virginia was a kingdom independent of all other nations, governed by a sovereign of her own selection. In justice to New England's historian, who possibly did try to tell the story of Virginia's people, I now quote from his account of the war between Virginia and Maryland:

"So the winter wore away without incident, but early in April, 1635, one of Claiborne's

ships, commanded by one Thomas Smith, was seized in the Patuxent River by Captain Fleete; she was condemned for trading without a license, and was confiscated and sold with all her cargo. Claiborne then sent out an armed sloop, the *Cockatrice*, to make reprisals upon Maryland shipping; but Calvert was wide awake and sent Cornwallis with a stronger force of two armed pinnaces, which overtook the *Cockatrice* in Pocomoke River and captured her after a brisk skirmish in which half a dozen men were killed and more wounded. That was on April 23, and on May 10 there was another fight in the harbour of Great Wighcocomoco, at the mouth of the Pocomoke, in which Thomas Smith commanded for Claiborne and defeated the Marylanders with more bloodshed.”<sup>7</sup>

In the next paragraph Fiske tells us that in “the midst of these unseemly quarrels the kingdom of Virginia witnessed something like a revolution,” meaning a civil war. Did Fiske see the light for a while? “The kingdom of Virginia witnessed something like a revolution.” For a while New England did not occupy all John Fiske.

<sup>7</sup> Fiske, vol. i, p. 293.

Later Virginia entered into an alliance with Maryland in order to wage a common war against the Indians along the Potomac.

All the American sovereignties waged wars against foreign nations. Those wars need not be considered here. But we should bear in mind that each nation maintained her existence as a sovereign entity.

#### THE FRENCH AND INDIAN WAR

As I have said, the American nations frequently combined in order to wage war against sovereign powers. They frequently assisted the king who was common to them all in the wars in which one of his peoples or more were engaged. When these wars were fought on American soil the American nations received but little assistance from the English people. I shall not go into the details of King William's War, which was ended in 1697; nor Queen Anne's War, in which large armies were engaged, a single army of allies numbering 7,000 soldiers and 800 marines,<sup>8</sup> and which was closed by the Treaty of Utrecht, in 1713; nor King George's War,

<sup>8</sup> Steele, vol. i, p. 3.



which was ended in 1748 by the treaty of Aix-la-Chapelle; but I shall ask you to consider a few features of the French and Indian War, which really began in 1753, when Governor Dinwiddie sent Major Washington to Virginia's frontier bearing a message to the French commander, in which he was told to leave Virginian soil, and which ended, we may say, when the Treaty of Paris was signed in 1763. In this war the British troops under Braddock were cut to pieces, his army was annihilated, and probably no British soldier of his command would have lived to see England again had not Washington and a few Virginian troops taken part in the battle.

England and France formally declared war against each other in 1756. This war did not meet with the full approval of Virginians, although they were at war with the French and the Indians themselves; nor was it approved by all the citizens of the other American nations. When the British government asked the American peoples for large armies, only 4,000 men took up their arms. However, later, in 1758, says Major Steele, "Pitt asked for 20,000, and they responded with alacrity." In the same paragraph he goes on to say that



in June "Abercrombie had an army of more than 15,000 men, over 6,000 of whom were British regulars, encamped about the ruins of Fort William Henry, at the head of Lake George. This was the largest body of troops that had ever been assembled on the American continent."<sup>9</sup> Thus we find that much less than half the men were British, in the largest army that ever assembled on the American continent until a few years after the middle of the eighteenth century. At that time Virginia could have put 50,000 white men into the field, inasmuch as an army of that size would have been merely one-fifth of her white population.

#### BACON'S REBELLION

The sovereignty of a nation is not affected by her civil wars so long as all other nations are neutral. While civil strife may overthrow a dynasty, to be replaced by another dynasty, or may alter the form of the government,—the nation becoming a republic instead of a monarchy, for example,—such changes in themselves do not affect the nation's sover-

<sup>9</sup> Steele, vol. i, p. 12.

eignty. Later on I shall have occasion to remind you of this statement of fact.

Virginia's great civil war of the seventeenth century, which was fought in 1676, just one hundred years before the Declaration of Independence was signed, was the first attempt to make a republic out of any one of the American kingdoms. I shall not review the strife known as Bacon's Rebellion in many of its details. It was fought by Virginians unaided by any foreign power. The political events that caused Bacon and his followers to overthrow the authority of their king need not be discussed here, but I shall say that there is no more interesting study in American history than Bacon's Rebellion; and no more picturesque person than Nathaniel Bacon has ever lived upon this continent, I safely add. A leader of men, a military genius, resourceful as few men have been resourceful, he deserves a place in the front rank of great Virginians. His war was not waged against Virginia's sovereignty; he fought for human freedom—for the rights of men as men, as he saw those rights. Indeed, were I asked to name three men of Virginia that tower above all Virginians other than themselves, I should

name them in chronological order—John Smith, Nathaniel Bacon, and Robert Edward Lee.

Bacon's Rebellion did not originate in quarrels among communities. Later on I shall refer to the rise of sectionalism in Virginia. Now I pause but to say that probably the first element that is developed in the character of a nation is provincialism—the entire nation by the world said to be provincial. There is but a step between provincialism and sectionalism, for sectionalism is merely provincialism divided, the home rule of provincialism, as it were. The strength of a nation is sectionalism. Civil wars may result, but the power of the political body is increased, while the life of the people undoubtedly is made more interesting. While Bacon's Rebellion did not originate in sectionalism, nevertheless there were sections in Virginia so early as 1624. Even then there was an eastern Virginia and a western Virginia.

Governor Berkeley, the king's representative, found that he was not strong enough to oppose Bacon, so he fled to the Eastern Shore. Bacon marched his army to Middle Plantation, which later became Williamsburg, the

capital of the nation, and there he was lord of all Virginia, save the Eastern Shore, a part of the commonwealth that remained faithful to the king. Mrs. Stanard, of Richmond, has closely studied the history of Virginia under Bacon's republic, and the result of her study is a valuable book. In this volume we are told that before the rebel left Middle Plantation to fight the Indians he issued a summons in the name of the king, which paper, signed by four members of the council, commanded the assembly to convene September 4, 1676, that the affairs of the colony might be managed until the commander should return. Already his followers had pledged themselves in writing to resist any force that might be sent by England against him.

“Upon the seventh of September Berkeley set sail for Jamestown, not as a prisoner, but with a fleet consisting of the recaptured ship and some sixteen or seventeen sloops manned by six hundred sturdy denizens of Accomac, whom he is said to have bribed to his service with promises of plunder of all who had taken Bacon's oath,—‘catch that catch could,’—twenty-one years' exemption from all taxes except church dues, and regular pay of twelve-

pence per day so long as they should serve under his colours.”<sup>10</sup>

One historian asserts that Berkeley’s force was one thousand when he sailed from the Eastern Shore.<sup>11</sup>

The engineering operations of both armies were quite extensive. A fierce battle was fought between Bacon and Berkeley, which forced the governor to return to his stronghold. But the war was not over, as the young rebel probably knew.

“His plans were now suddenly interrupted by a report from Rappahannock County that Colonel Brent, who, it seems, had gone over to the Governor’s side, was advancing upon him at the head of eleven hundred militia. No sooner had he heard this news than he ordered the drums to beat up his soldiers, under their colors, and told them of the strength of the approaching army, and of Brent’s ‘resolution’ to fight him, and ‘demanded theirs.’

“With their wonted heartiness, his men made answer in ‘shouts and acclamations, while the drums thundered a march to meet the promised conflict.’

<sup>10</sup> Mary Newton Stanard, *The Story of Bacon’s Rebellion*, p. 111.

<sup>11</sup> Fiske, vol. ii, p. 87.



“Thus encouraged, Bacon set out without delay to give the enemy even an earlier chance to unload his guns than he had bargained for. He had been on the march for several days when, instead of meeting a hostile army, he was greeted with the cheerful tidings that Brent’s followers, who were described as ‘men, not soldiers,’ had left their commander to ‘shift for himself.’ They had heard how the Rebel had beat the Governor out of town, and lest he should ‘beat them out of their lives,’ some of them determined to keep a safe distance from him, while most of them unblushingly deserted him, deeming it the part of wisdom ‘with the Persians, to go and worship the rising sun.’”<sup>12</sup>

Not long after these events Bacon died of malaria, which he contracted while he was about Jamestown. Other civil wars that were fought in Virginia need not be mentioned here.

#### VIRGINIA’S SOVEREIGNTY CONCEDED

That Virginia was a sovereignty from 1578 until 1783 was held by many eminent persons during all those years.

<sup>12</sup> Standard, pp. 135-136.



In his dedication of *Faerie Queene*, written during Elizabeth's time, Edmund Spenser refers to his lovely sovereign as the queen of England, France, and Ireland, and of Virginia. He undoubtedly considered each of those countries to be kingdoms.

Charles I made William Claiborne secretary of state in "our kingdom of Virginia." Beverley says that Charles II was proclaimed by Virginia as her sovereign before he was called to the British throne.<sup>13</sup> This statement was accepted by many historians until a few years ago. Fiske says that the story is absurd, that Charles II was proclaimed king in England on the eighth of May, 1661, and in Virginia on the twentieth of September following, and for authority refers to some document printed in *William and Mary Quarterly*. While Charles II did not exercise the powers of the office of king of Virginia before he was proclaimed as the English sovereign, still he actually was proclaimed king of Virginia before he was proclaimed king of England, even if the Virginian proclamation was not heard around the world. In the meanwhile the

<sup>13</sup> Robert Beverley, *History of Present State of Virginia*, London, 1705, p. 56, cited by Fiske, vol. ii, p. 21.

young nation acknowledged no other king than the man whom she had called to her throne.

Already we have seen that the news of the execution of Charles I was received in Virginia with deep indignation. Fiske himself says: "In October the assembly declared that the beheading of the king will enact a treason which nobody in Virginia must dare to speak in defence of under penalty of death. It also spoke of the fugitive Charles II as 'his majesty that now is,' and made it treason to call his authority in question."<sup>14</sup> So Fiske himself quotes from Virginia's proclamation, made by the parliament of her people, and published to the world nearly two years before Charles II was proclaimed king of England. Even if Virginia did not formally issue her proclamation before England issued hers, still the spirit of the times is shown in the assertions of contemporaneous historians. Fiske himself probably would have admitted that Virginia might have proclaimed Charles II as her sovereign at any time after the death of Charles I without asking the leave of any other nation.

<sup>14</sup> Fiske, vol. i, p. 312.

## FROM 1776 TO 1783

I shall not enter into a detailed account of the causes that led the rabble of a part of the people of each of the American nations to rebel against their king. The sovereignty of none of the countries was thereby affected, although one may hold that the sovereignty of each was placed in jeopardy, inasmuch as George III tried to make his American kingdoms and his European kingdoms into one vast empire. I shall remind you that the sovereignty of a nation is not necessarily affected by governmental changes.

The rebels did not fight that independent nations might be made of colonies. The American nations had been sovereign entities from the time that they were first settled. They had successfully resisted the attacks made upon them by the British kingdom. The honest men among the rebels fought that they might establish governments republican in form,—believing that all the people could not be independent in a kingdom,—with all the rights that all human beings should be free to exercise. The rebels were unwilling to be

taxed without their consent, they said; but no one believes that they would have given their consent to be taxed by the British government—or by any other.

We shall see that the American kingdoms became republics; but we shall also see that the rabble did not bring about the change. We shall see that the rebellion never reached the proportions of a revolution, for we shall see that only a small part of the people of any of the American nations wished to depose their king. True, few were willing to permit a foreign government to exercise over them the high power of sovereignty that would be maintained were that government to tax them for its own benefit; but, the rabble excepted, the peoples of the American nations thought that the conditions then existing did not make a war with Great Britain necessary. More than once the king of the united kingdoms and the American kingdoms that were not united had attempted to make laws common to the peoples of all his nations, but such international complications had been adjusted without an appeal to arms, and very little diplomacy had been used in settling all differences. The American kingdoms always had

put their king right when he had been wrong, and in doing so he had been made to suffer very little inconvenience.

At this time Tories controlled the British ministry. Not only was the government in sympathy with the rabble, but the king had no wish to be harsh with any of his American subjects. The rebellion was not taken seriously by him, nor by the rebels themselves, while nearly all of the American peoples considered the acts and the utterances of the mobs very much as we now consider the crimes and the intemperate words of the rabble that is always with us. I do not go too far when I say that the rebellion would have been brought to an end within a few days from the time that it began had the British commanders and the American peoples considered the rebellion to be more than the temporary expression of a rabble muttering against constituted authority.

Already I have quoted from Major Steele. His *American Campaigns*, in two volumes, was published last year by the Office of the Chief of Staff, War Department, Washington, and is known as Document No. 324. It is used as a text-book in the post-graduate military



schools, where officers of the army, selected because of the high degree of their proficiency, pursue their studies in the science of war. These volumes represent a part of Major Steele's work of three years as lecturer in military history in the Army Service Schools at Fort Leavenworth. Their value is very great. In his department of science I know of no writer of higher authority than Major Steele.

Another book of great value from which I shall quote frequently is *The Military Policy of the United States*, by General Emory Upton, U. S. A., a new edition of which recently has been published by the Office of the Chief of Staff, War Department, as Document No. 290, with an introduction by Elihu Root, written by him while he was secretary of war. This book also is studied by army officers that are students—rather than pupils—at military schools.

#### FIGHTING STRENGTH OF THE AMERICAN NATIONS

According to the first census, the population of the American nations in 1790 was 3,231,317 Caucasians and 697,897 negroes, making a



total of 3,929,214, or a population of nearly four millions. In estimating the fighting strength of the nations the negro must be taken into consideration, for the people of a nation must live while they are at war. The negroes were easily controlled. There has never been a widespread uprising of negroes on this continent. The Southampton Insurrection, the most important of negro revolts that have occurred on this continent, involved a small territory only. When we consider the character of the negro, we readily understand that there could never be an important negro organisation. Nevertheless, in considering this rebellion I shall eliminate the negro, and I shall accept General Upton's estimate of the population of the American nations, which apparently does not include negroes. He assumed the number of the American peoples at the beginning of the Revolution to be three millions.<sup>15</sup> There were more than three million white persons in the American nations in 1776, I think. But, as I have said, I shall accept General Upton's estimate for the purpose of this oration.

<sup>15</sup> Emory Upton, *The Military Policy of the United States*, War Department, Document No. 290, Office of the Chief of Staff, p. 66.

I shall also consider the fighting strength of the American peoples to have been so small as one-fifth of the population. This is a very low estimate when we find that so late as 1880 the natural militia of Virginia—males between the ages of eighteen and forty-four years inclusive—was 264,033 Caucasians and 102,426 negroes, a total of 366,459 in a male population of 747,589, or nearly one-half the male population. Surely in earlier days, when men were not penned up in cities, when males were more numerous than females in new countries, when men were sturdy at eighty, the fighting strength of the American peoples must have exceeded one-fifth of their population.

#### CHARACTER OF THE RABBLE FORCE

The rebels always had a large paper army, although that army was never more than nine per cent of the fighting strength of the American nations. By "paper army," I mean the men that were counted as soldiers who never saw service, who enlisted in militia organisations for periods ranging from a day to several months, and who were usually bribed to violate the allegiance that they owed to their

king. A table submitted by the secretary of war to congress in 1790 shows that the entire paper army of the rebels for the year 1776 was 89,661; yet, says General Upton, the average of that paper army could not have been more than between 40,000 to 50,000 men. As we presently shall see, the largest force that Washington could have put into the field during the entire war was 17,000 men.

I will show you how paper soldiers were made. On March 29, 1779, congress recommended Virginia and North Carolina to raise as many men for their defence as they could, the soldiers to serve for one year, and not to be obliged to go north of the Potomac river. A bounty of two hundred dollars was to be given to each of these soldiers, and their names were to be entered in the rebels' archives as a part of their military force. To quote from General Upton again: "Large for the time as were the bounties granted by congress, those offered by the states were still larger. The legislature of New Jersey, to fill its quota for its three battalions, offered two hundred and fifty dollars to each recruit, in addition to the clothing, land, and two hundred dollars allowed by congress. While the

legislature of Virginia, on the third of May, offered to every recruit for the war seven hundred and fifty dollars, a suit of clothes once a year, and one hundred acres of land.”<sup>16</sup> Indeed was the patriotism of the rabble sufficient to make them blush in their confusion of innocence.

According to the tables that the secretary of war prepared in 1790, many men, including the paper militia, enlisted for a few days only. These tables show that the whole paper force for 1775 was 37,623. The tables also give the following information: whole rebel paper force, for 1776, 89,661, of which Virginia supplied 6,181 and Massachusetts 20,372; for 1777, 68,720, of which Virginia supplied 11,013 and Massachusetts 12,591; for 1778, 51,046, of which Virginia supplied 7,830 and Massachusetts 13,437; for 1779, 44,275, of which Virginia supplied 8,573 and Massachusetts 7,738; for 1780, 43,076, of which Virginia supplied 6,986 and Massachusetts 7,889; for 1781, 29,340, of which Virginia supplied 6,119 and Massachusetts 5,298; for 1782, 18,006, of which Virginia supplied 2,204 and Massachusetts 4,423; for 1783, 13,-

<sup>16</sup> Upton, p. 41.

477, of which Virginia supplied 629 and Massachusetts 4,370. Thus of rebel paper soldiers, Virginia supplied 49,935 and Massachusetts 80,118, while the combined paper strength of the rebels was 395,224. The highest number of paper soldiers that Virginia supplied during any one year was 11,013, while the lowest number that she supplied in any one year was 629, yet Virginia's fighting strength was something like 100,000 men. The small state of Massachusetts supplied nearly double the number of men that were supplied by Virginia.

During the last year of the rebellion Virginia had fewer men under arms than she has had from 1624 to the present day. During the entire insurrection the Virginian rebel paper force, the bulk of which admittedly stayed at home, was less than 5,000 men. The average paper force during the rebellion was less than 44,000 men, or about one and one-half per cent of the whole population, or about one man out of every 350 white men.

During 1776, when the aggregate number of rebel insurgent paper troops reached 89,661, the enemy had but 20,121 troops in all America, although operating in the enemy's



territory, and in one year only did the English force number so many as 42,075. The average force of the British was about 30,000 men. These figures, save for the average, are taken from General Upton's book.<sup>17</sup>

In 1775 the military strength of the American nations was 600,000 men, based on the low estimate of one-fifth of the white population alone. Nevertheless, as General Upton tells us, "The largest force, Continental and militia, that Washington could lead to battle at any one time was less than seventeen thousand, while at the battles of Trenton and Princeton, during the time of our greatest peril, his effective strength was less than four thousand."<sup>18</sup> Thus at no time were the rebels able to put on the field much more than one-half of one per cent of the white population of the American nations.

Let us consider the kind of force that was supposed to constitute an army. Major Steele says that when Washington took command at Boston, July 2, 1775, his men made "a rabble without uniforms, without tents, without supplies, without discipline."<sup>19</sup>

<sup>17</sup> Upton, p. 59.

<sup>18</sup> Upton, p. 65.

<sup>19</sup> Steele, vol. i, p. 25.



In the same paragraph he takes Washington to task, saying that he had plenty of time to make an army of his rabble, "for no fighting took place within the northern colonies until the Battle of Long Island, more than a year later, August 27, 1776." General Upton also pays his respects to Washington and to his creatures, saying: "When Washington took command his army numbered 17,000 men, but the number fit for duty did not exceed 14,500. The strength of the enemy was estimated by the council of war at 11,500; but after deducting the sick and wounded his real effective strength was not over 6,500. Notwithstanding this disparity in numbers, neither Washington nor his generals deemed it prudent to attack, and the year passed away in hopeless inactivity."<sup>20</sup>

General Howe and Admiral Howe, says Major Steele, both sympathised with the colonies, and he quotes Goldwin Smith, thus: "As a member of Parliament he [General Howe] had pledged himself to his constituents not to fight against the Americans, and he must have been fettered by that pledge." In the same paragraph Major Steele says that

<sup>20</sup> Upton, p. 9.

it "is too much to say that he was unfaithful to the trust imposed upon him, although the evidence certainly points to that verdict."<sup>21</sup> The inactivity of the British thus was due to several causes, a few of which I shall show later.

Even John Adams admitted that one-third of his people were loyal to their king. Had he entirely obeyed the demands of his conscience he would have said that a larger part of his people by far were their sovereign's obedient subjects. In Virginia nearly all the people were loyal, as presently we shall see.

#### PROGRESS OF THE REBELLION

Not many of the inhabitants of New England accompanied Washington to New York after the evacuation of Boston, for Major Steele says that Washington, in taking the bulk of his force, took only 8,000 men with him.

Again to quote from General Upton: "The total loss of Washington's Army in killed, from the time that he took command, to the end of the siege of Boston, did not reach 20, while the whole loss in killed from the battle

<sup>21</sup> Steele, vol. i, p. 37.

of Lexington was less than 200.”<sup>22</sup> Major Steele, further commenting on the evacuation of Boston, says: “The strangest thing of all, he [Howe] left there, to be seized by the rebels, ‘more than 200 cannon, tons of powder and lead, thousands of muskets, and all sorts of miscellaneous military stores.’ It was not until after the 17th of March that he [Howe] sailed—twelve days after Washington had seized the heights. He certainly had time to destroy those arms and supplies. This and all of General Howe’s subsequent conduct cannot fail to make the impartial student suspect him.”<sup>23</sup> On the next page he says that Howe’s withdrawal to Halifax so encouraged the insurgents that the Declaration of Independence followed a few months afterward.

Washington seems to have understood that his rabble capitalised the insurrection, exploiting the American peoples all they could. I will quote from a letter that he wrote to the president of the council of Massachusetts Bay under date of August 7, 1775:

“By the general return made to me for last

<sup>22</sup> Upton, p. 12.

<sup>23</sup> Steele, vol. i, p. 25.

week, I find that there are great numbers of soldiers and non-commissioned officers who absent themselves from duty, the greater part of whom, I have reason to believe, are at their respective homes in different parts of the country; some employed by their officers on their farms and others drawing pay from the public, while they are working on their plantations or for hire. My utmost exertions have not been able to prevent this base and pernicious conduct. I must, therefore, beg the assistance of the General Court to cooperate with me in such measures as may remedy this mischief.

“I need not enlarge upon the ruinous consequence of suffering such infamous deserters and defrauders of the public to go unnoticed or unpunished, nor use any arguments to induce the general court to give it immediate attention.”<sup>24</sup>

The Battle of Long Island was disastrous to the rabble, so Washington retreated to New Jersey. By the time that he had reached New Brunswick his force was reduced to 3,000, the

<sup>24</sup> Sparks, *Writings of Washington*, vol. iii, pp. 65-66, quoted by Upton, pp. 8-9.

rest of his followers having deserted or their terms of service having expired.<sup>25</sup> January 3, 1777, Washington reported to Congress that "the whole of our numbers in New Jersey, fit for duty at this time, is under 3,000. These, 981 excepted, are militia and stand engaged only until the last of this month." Virginians will be interested to know that in his report he said that of Virginians a "handful of men" only were with him. Commenting on this paper, quoting Sparks, General Upton says that Washington's regular soldiers were thus reduced to less than 1,000, while his enemy had more than 20,000 veterans in and about New York.

Everybody seemed to think that the rebellion was effectually suppressed. Major Steele says that when "Washington retreated into New Jersey, instead of pursuing his demoralised band to its destruction, Howe followed it slowly a short way," that "he made no attempt to do anything at all during the winter months but riot in the fleshpots and frivolities of social life in New York or Philadelphia." The rebels entered New York and left as they pleased.<sup>26</sup>

<sup>25</sup> Steele, vol. i, p. 30.

<sup>26</sup> Steele, vol. i, p. 37.



Many of the intelligent inhabitants of the American nations did not even know that there was a rebellion until several years after the British soldiers had been fired on at Lexington, this for the reason that the operations of the rabble were confined to a few places, beyond which there were few evidences of rebellion, if any. After a bit of flurry in South Carolina in June, 1776, the southern nations were not again annoyed by the presence of the English until the autumn of 1778, we are told by Major Steele. Few of the inhabitants of Virginia saw a redcoat during the entire nine years of the rebellion. By the late autumn of 1778 the British occupied New York City alone, and, says Major Steele: "Outside of the immediate theatre of operations, the Americans up to this time had suffered few of the discomforts of war."<sup>27</sup>

#### RABBLE FIGHTING

We have seen how these bribed creatures fought—or did not fight—at Boston and at New York, and we have imagined their speed as they ran through New Jersey. Now I am unable to resist the temptation to refer to the

<sup>27</sup> Steele, vol. i, p. 43.



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Battle of Camden, so I quote from two descriptions of that extraordinary conflict. I begin with Major Steele's account:

"Meanwhile Cornwallis had arrived with reinforcements. The Americans, however, still outnumbered the British. There were 3,052 Americans, only 1,400 of whom were regulars, to 2,000 British. Gates, however, had not learned of the arrival of Cornwallis, and he detached 400 of his best Maryland regulars to join Sumter in cutting the British line of communication with Charleston.

"At ten o'clock at night the two little armies advanced toward each other, each hoping to take the other by surprise. The result was the Battle of Camden, August 16, 1780, on a narrow piece of ground with an impassable swamp on each flank. Gates' Virginia and North Carolina militia threw down their arms, and fled without firing a shot. 'Within fifteen minutes,' says Fiske, 'the whole American left became a mob of struggling men, smitten with mortal panic, and huddling like sheep in their wild flight, while Tarleton's [British] cavalry gave chase and cut them down by scores.' The Maryland brigade be-

haved better; but it also was driven from the field. The patriots were badly defeated. General Gates himself escaped to Hillsboro, riding 200 miles in four days.”<sup>28</sup>

Now I quote from the description written by one of the officers in that battle, “Light Horse Harry” Lee, the father of the greatest of all Virginian soldiers:

“The Maryland leading regiment was soon recovered from the confusion produced by the panic of Armand’s cavalry. [Here I break in upon “the noble Harry” that I may tell you that even to this day the whereabouts of no man of all Armand’s cavalry is known. When an unknown horseman madly rushes along a South Carolinian highway, excitement in all his features, his clothes awry, the onlookers say, “There goes one of Armand’s cavalymen.”] Battle, although unexpected, was now inevitable, and General Gates arrayed his army with promptitude. The Second Brigade of Maryland, with the regiment of Delaware, under General Gist, took the

<sup>28</sup> Steele, vol. i, pp. 45-46.

right; the brigade of North Carolina the center, and that of Virginia, under Brigadier Stevens, the left. The First Brigade of Maryland was formed in reserve under the command of General Smallwood. To each brigade a due proportion of artillery was allotted, but we had no cavalry, as those who fled in the night were still flying. Maj. Gen. Baron de Kalb, charged with the line of battle, took post on the right, while the general in chief, superintending the whole, placed himself on the road between the line and the reserve.

“The light of day dawned—the signal for battle. Instantly our centre opened its artillery, and the left of our line, under Stevens, was ordered to advance. The veterans of the enemy, composing its right, were of course opposed to the Virginia militia, whereas they ought to have been faced by the Continental Brigade. Stevens, however, exhorting his soldiers to rely on the bayonet, advanced with his accustomed intrepidity. Lieut.-Col. Otho Williams, adjutant-general, preceded him with a band of volunteers, in order to unite the fire of the enemy before they were in reach of the militia, that experience of its ef-

ficiency might encourage the latter to do their duty.

"The British general, closely watching our motives, discovered this movement on the left, and gave orders to Webster to lead into battle with the right. The command was executed with the characteristic courage and intelligence of that officer. Our left was instantly overpowered by the assault; and the brave Stevens had to endure the mortifying spectacle exhibited by his flying brigade. Without exchanging more than one fire with the enemy, they threw away their arms and sought that safety in flight which generally can be obtained only by courageous resistance. The North Carolina brigade, imitating that on the right, followed the shameful example. Stevens, Gaswell, and Gates himself struggled to stop the fugitives and rally them for battle; but every noble feeling of the heart was sunk in base solicitude to preserve life; and having no cavalry to assist their exertions, the attempted reclamation failed entirely. . . .

"Our loss was very heavy. More than a third of the Continental troops were killed and wounded; and of the wounded 170 were made prisoners. The Regiment of Delaware

was nearly annihilated. . . . The North Carolina militia also suffered greatly; more than 300 were taken and nearly 106 killed and wounded. Contrary to the usual course of events and the general wish, the Virginia militia who set the infamous example which produced the destruction of our army escaped entirely.”<sup>29</sup>

General Upton tells us that an incident of the Battle of Guilford Court-house should not be overlooked. He says that Stevens, “profiting by his experience at Camden, where he had been deserted by his brigade, placed a chain of sentinels in the rear of the second line with orders to shoot the first man who should try to desert his post.”<sup>30</sup>

In the spring of 1781 La Fayette was in command in Virginia, with 3,000 men, where he was to resist Cornwallis, who had an army of 5,000 veterans. La Fayette was joined by 1,000 Pennsylvanians, and later was further reinforced by Steuben, with 1,000 men. Let us pause: 420,000 white Virginians, whose fighting strength could not have been less

<sup>29</sup> Lee, *Memoirs*, vol. i, pp. 178-183, quoted by Upton, pp. 44-45.

<sup>30</sup> Upton, p. 56.



than 80,000, and may have been 100,000, resisted the invasion of Virginia with Frenchmen assisted by a few Pennsylvanians. There may have been a few Virginians skulking about hedges. Does any Virginian believe that story?

I think not. I recall that so early as 1676 the two small counties that constitute the Eastern Shore raised an army of one thousand men to uphold the authority of the king. No, Virginia was not invaded. Her rabble was in rebellion, which would be suppressed by Virginia's sovereign at his pleasure. If you take any other position, Virginians, go hide your faces in shame!

#### THE KING ABDICATES

The surrender of Cornwallis did not force the British to withdraw from American territory. Long before that event Burgoyne had surrendered a large army. General Upton says that during the entire rebellion two military events only "had a direct bearing upon the expulsion of the British. One of these was the capture of Burgoyne; the other that of Cornwallis—an event which



was only made possible by the cooperation of a French army and a French fleet."

But while these two events possibly led George III to leave the throne of his American kingdom, they could not have greatly influenced him. He lived in England, and England had been at war for more than two centuries, with brief respites snatched at intervals. During the time of the rebellion of his American subjects England was at war with France, with Spain, and with Holland, his subjects in India were in rebellion, while beyond his own English realm he was without a friend in all Europe. Even at home his enemies were thick. The Tories would shout with joy every time a British subject laid down his life under fire. Says Major Steele: "There are, indeed, many points of likeness between the Philippine Insurrection and our own Revolution; but there is this main difference: our Revolution succeeded. Had it failed, it would be in the world's annals merely an insurrection, too, occupying a few pages in British history, and having no national history of its own."<sup>31</sup>

Many forget that the American nations

<sup>31</sup> Steele, vol. i, p. 23.

were world powers at the time of the rebellion. They forget that the last Revolutionary pensioner died but a few years ago. Indeed, the last of the Revolutionary rabble did not die until 1869, while in 1875 there were 379 widows of Revolutionary soldiers drawing pensions. No, the period of the Revolution was not long ago. At that time the population of England was not greater than twice that of the American peoples. The first reliable British census, taken in 1801, shows that the population of England and Wales combined was then 8,892,536. Probably the population of England in 1775 was not greater than six millions.

England at that time had her naval stations in all parts of the world. She had an abundance of territory for her surplus population on the American continent without drawing on the nations to the south of Canada. She had bound the American peoples to her with chains that had been forged by Almighty God, and she knew that no link could ever be broken. George descended from the throne of each American nation; but surely he was forced off the throne of none.

Thirteen nations, with a military strength

of 600,000 men, could have driven away those 6,500 effective men who occupied Boston. Yet there are persons who contend that a force of 6,500 effective men, three thousand miles from home, was able to hold the vast territories of thirteen kingdoms, in which there were large tracts of unsurveyed lands, and in which there were more than three million Caucasian inhabitants besides hosts of hostile savages! One person only in five hundred willing to resist an invasion of his country?

Not so! Americans were virtuous beyond all other peoples: the rabble, 1; the worthy, 500. If the American peoples were fighting a war with Great Britain—or if they were resisting the authority of their lawful king—they permitted thirty thousand men to hold three million men in check—in check while they had a fighting force of six hundred thousand men. If that be the calibre of the people that comprised this monarchy, then, I say, the most savage of the tribes of darkest Africa were superior to those American peoples, for no nation would undertake to conquer three million savages with thirty thousand men.

How many Americans would be required to conquer the Philippine peoples? Not all the people of this vast monarchy may conquer the Philippine peoples in all time. Why, you say, they have been conquered! If so, why are they permitted to buy and sell human beings? Why in the Philippines are men and women sold into a slavery vastly more brutal than ever has been known on this continent? No, despite warfare that has been waged in our foreign "possessions" for twelve years, the various Philippine nations are still sovereign, and they will remain sovereign so long as the American monarchy exists, even though American soldiers occupy Philippine lands until the crack of doom. Turn back the hands of Time, O Despot of this Monarchy, and when you reach the period of Elizabeth, learn the lesson that she taught her subjects more than three hundred years ago: no people may ever be possessed by any other people; no colonies may ever be established; the only bonds that may bind humanity are those of love.

Highway robbers, the rabble fought for themselves. There were exceptions. At least one gentleman was a rebel; the gallant

"Light Horse Harry." But, I repeat, few Virginians desired to alter the government under which they lived. Few hated the mother at whose breast they were nursed.

After the Treaty of Paris all worthy persons in the American nations supported their new governments. They showed that the American peoples of 1775 were among the powerful nations of the earth, for those same peoples after the Treaty of Paris continued to develop the American republics until they became powerful in all that makes a great people great. But do not mistake the rabble that fought their king for the patriots who established the American republics.

#### GOVERNMENT BY THE RABBLE

Although the rebels constituted but a small proportion of the population of any of the American nations, yet they gained control of each of the American governments. That they were able to do so is the most inexplicable part of American history. In Virginia the rabble constituted so small a part of the population, I am lost in wonder that conditions could have been as they were in this old commonwealth.



However, in more than one period of Virginia's life native Virginians have governed Virginia in a manner that would have made carpetbaggers blush in their shame; nevertheless the people of no other land, in no other time, have been so noble as Virginians. They have seen carpetbaggers purchase split-bottom chairs at sixty-seven cents apiece while acting as private citizens, then sell the same chairs to the Virginian government while acting as Virginian legislators at sixty-seven dollars a piece; but also Virginians have seen Virginian legislators bribe the Virginian rabble at seven hundred and fifty dollars a head to become paper soldiers to fight on paper against their king.

Virginia, according to the point of view of these legislators, was invaded. For several years the rabble had drawn good pay,—more than they had ever received before in their lives, year in and year out,—and their service had consisted in having their names made a part of the archives of their country as soldiers serving at home; and further service consisted in wanton crimes committed on the persons and the estates of noble Virginians, men and women who were the pride of Vir-



ginia; and they still further served Virginia by taking their pay as soldiers and their bounty of seven hundred and fifty dollars a head to taverns, where they spent it in all sorts of beastly sensualities. Thus had Virginians rewarded these faithful servants.

“Assuming three millions as a total number of our people at the beginning of the Revolution, the whole cost of this country to each man, woman, and child was \$123, while, upon the basis of a population of 31,000,000 in 1861, the total cost per capita of the War of the Rebellion was but \$96.”<sup>32</sup>

They were further rewarded:

“The total amount paid to Revolutionary pensioners up to June 30, 1876, for a period of service of six months and over, was \$46,177,845.44.”<sup>33</sup>

General Upton goes on to tell us that “the total of pensions in round numbers amounts to \$80,000,000,” basing his figures on the report of Bentley, Commissioner of Pensions.

I shall not further recite the awful crimes committed against Virginia by Virginians while they governed Virginia during the rebellion. None of us for one mo-

<sup>32</sup> Upton, p. 66.

<sup>33</sup> Upton, p. 65.

ment can believe that the mass of Virginians were other than faithful to Virginia's high traditions and high ideals. A handful of rabble dominated her—and we wonder. That the rabble of the other nations were quite as bad as Virginians I have already intimated. Now I quote from a letter that George Washington wrote to Joseph Reed, and then I am done with the character of the rabble. The letter is one of probably a hundred similar letters that Washington wrote to Congress and to his subordinates.

“Such a dearth of public spirit and such want of virtue, such stock-jobbing and fertility in all the low arts to obtain advantages of one kind or another in this great change of military arrangement, I never saw before, and pray God's mercy that I may never be witness to again. What will be the end of these manœuvre is beyond my scan. I tremble at the prospect. We have been till this time enlisting about three thousand five hundred men. To engage these I have been obliged to allow furloughs as far as fifty men to a regiment, and the officers, I am persuaded, indulge as many more. The Con-

necticut troops will not be prevailed upon to stay longer than their term, saving those who have enlisted for the next campaign, and are mostly on furlough; and such a mercenary spirit pervades the whole that I should not be at all surprised at any disaster that may happen. In short, after the last of this month our lines will be so weakened that the minute men and militia must be called in for their defence, and these being under no kind of government themselves will destroy the little subordination I have been laboring to establish, and run me into one evil while I am endeavoring to avoid another; but the less must be chosen.”<sup>34</sup>

#### GOVERNMENT UNDER FIRST FEDERAL COMPACT

At no time during the rebellion did the American nations act as a single nation. A treaty was entered into by them on November 15, 1777, the treaty being known as Articles of Confederation. Says Frothingham, the treaty as amended, and as accepted by all the American nations, provides that “‘each state retains its sovereignty, freedom and in-

<sup>34</sup> Sparks, *Writings of Washington*, vol. iii, pp. 178-179, quoted by Upton, p. 6.

dependence'—the first statement after the Confederation had been given a name.”<sup>35</sup> This was the first governmental union made by the American nations for purposes other than war, and the object of this union really was to wage war successfully. The nations parties to the compact each continued to exercise full powers of sovereignty, and when they disapproved any provision of the confederation such provision was disregarded by them.

For a moment let us look closely at the “government” under the compact of 1777 and its amendments. In 1784 the citizens of the western part of North Carolina seceded from that nation and formed themselves into a republic, to which they gave the name State of Franklin.<sup>36</sup> A government was organised, consisting of a parliament with two houses, a governor, and a full judiciary department. Landon Carter was chosen speaker of the Senate and Thomas Talbot clerk, while Wil-

<sup>35</sup> Frothingham, *The Rise of the Republic of the United States*, p. 561; quoted by Ewing, *Northern Rebellion and Southern Secession*, p. 14.

<sup>36</sup> An excellent history of the State of Franklin is contained in Prof. Francis M. Turner's *Life of General John Sevier*, one of the authorities that I consulted in the preparation of this oration.

liam Gage was chosen speaker of the House of Commons, and Thomas Chapman clerk; General John Sevier was elected governor, and the Supreme Court was presided over by three judges. A constitution was adopted, and for several years the government was effectively administered, until March, 1788, when Sevier's term of office expired. During the life of this little republic it exercised all the functions of sovereignty, including the waging of civil war. Civil strife only was the cause of her destruction. In time the republic became the present state of Tennessee.

. . . . .

No matter what view one may take of the strife known as the Revolutionary War,—whether the American nations fought to resist powers of sovereignty that England attempted to exercise over them, whether they fought to change their nations from kingdoms to republics, or whether they fought to establish nations,—one must admit that they were sovereignties the moment that the Treaty of Paris became effective.

Let us consider one of the provisions of that treaty:

“His Britannic Majesty acknowledges that



said United States, viz: New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be Free Sovereign, and Independent States; that he treats with them as such.”<sup>37</sup>

Thus the king common to Great Britain and all the American nations,—and to other nations, such as Canada,—acting as the head of the British Government, acknowledged the independence of each of the American nations—not the independence of those nations confederally, but the independence of those nations individually, as separate political entities. At the same time the American nations ceased to be kingdoms.

Thus we find that the Revolutionary War never affected the sovereignty of any one of the American countries.

<sup>37</sup> Art. i, Treaty of Paris, September 3, 1783.

## II

### THE AMERICAN REPUBLICS

FROM 1783 TO 1865

THE treaty known as Articles of Confederation was the only compact that existed between the American nations from 1777 until the treaty of 1788 went into effect.

That the treaty of 1788 and its amendments was not nearly perfect as an instrument by which the nations expressed their views of the confederation that they had formed, is shown by the trouble that it caused from the time that it was adopted until the present day. That document has been the cause of more litigation than any other instrument ever written. Tens of thousands of human beings have lost their lives in trying to interpret it. Not only was it imperfect as an agreement, but it was the means of defeating the object that the parties to it wished to attain. While I shall not attempt to point to all its defects, I shall ask you to consider these few:

A powerful blow was dealt to the sovereignty of the American nations when the compact permitted the federal power to levy any kind of tax. Nor should any nation permit a holding company to make her money, change her fiscal system at will, nor in any other way to interfere with her domestic affairs. No nation should permit a holding company to organise and to control her militia.

Here I stop recounting the defects of the treaty that was intended to regulate the American nations in their intercourse with one another and with other nations, for I should take your time unnecessarily were I able to point out all the defects that mar a compact that might have been perfect. Let me say, however, that at least one Virginian apparently saw all the defects of that compact. I refer to Patrick Henry, the greatest statesman of his period, and among the great statesmen of all time.

“Congress,” said he, “by the power of taxation—by that of raising an army, and by their control over the militia, have the sword in one hand, and the purse in the other. Shall we be safe without either?”<sup>38</sup> So

<sup>38</sup> William Wirt, *Patrick Henry: Life, Correspondence and Speeches*, 3 vols., vol. 3, p. 495.

spoke that great statesman June 9, 1788; and then he went on to say: "Let him candidly tell me, where and when did freedom exist when the sword and purse were given up from the people? Unless a miracle in human affairs interposed, no nation ever retained its liberty after the loss of the sword and purse." <sup>39</sup> There were Virginians other than Patrick Henry who saw many of the defects of the compact.

There were statesmen in all the American nations that were in sympathy with Patrick Henry's views. Samuel Adams in a letter to Richard Henry Lee said, "I stumble at the threshold." Evidently he viewed the instrument with misgivings.

#### TREATY OF 1788 AS VIEWED BY THE NATIONS

Few of the American nations, if any, were willing to become parties to the written agreement until they had been assured that it should not be construed to affect their sovereignty in the least. They were willing to delegate specified powers to a holding company,—such as the federal agents would make,—for each nation would have the right to take

<sup>39</sup> Wirt, vol. 3, p. 495.

back the powers so delegated. The relations of each country to the federal agents were to be similar to those that exist between client and lawyer. Each nation intended carefully to guard her rights under the treaty as well as her sovereignty.

In the constitutional convention that assembled in Philadelphia in 1787, one of the delegates from Delaware declared that his nation would form an alliance with some European power rather than enter into a union that would empower stronger nations to treat her unfairly.

Unwilling to jeopardise her sovereignty, Massachusetts had refused to become a party to the treaty of 1788 unless that agreement should be amended in this: "*First*, That it be explicitly declared that all Powers not expressly delegated by the aforesaid Constitution are reserved to the several States to be by them exercised."<sup>40</sup> The "amendments & alterations" that were demanded by Massachusetts were held to be necessary "to remove fears & quiet apprehensions of many of the good people of this Commonwealth &

<sup>40</sup> *Documentary History of the Constitution of the United States*, vol. ii, p. 94.



more effectually guard against an undue administration of the Federal Government.”<sup>41</sup>

New York became a party to the compact after she had made known her interpretation of the agreement in the following language: “That the Powers of Government may be resumed by the People, whensoever it shall be necessary to their Happiness; that every Power, Jurisdiction and right, which is not by the said Constitution clearly delegated to the Congress of the United States, or the departments of the Government thereof, remains to the People of the several States, or to their respective State Governments to whom they may have granted the same; And that those clauses in the said Constitution, which declare, that Congress shall not have or exercise certain Powers, do not imply that Congress is entitled to any Powers not given by the said Constitution; but such Clauses are to be construed either as exceptions to certain specified Powers, or as inserted merely for greater caution.”<sup>42</sup>

Rhode Island, one of the nations that refused to enter into the compact, in time of-

<sup>41</sup> *Ibid.*, p. 93.

<sup>42</sup> *Documentary History of the Constitution of the United States*, vol. ii, p. 94.

ferred to enter into trade relations with her sister nations, and "at the request and in behalf of the General Assembly" her governor forwarded "To the President, the Senate, and the House of Representatives of the eleven United States of America" her "disposition to cultivate mutual harmony and friendly intercourse." The papers were officially labeled "Rhode Island desires to maintain friendly relations with the United States," and bearing that label were laid before the federal congress by Washington September 26, 1789. Rhode Island continued to exercise her sovereign rights unmolested until May 29, 1790, when she became a party to the treaty between the American nations, at her request,—but not before she had imposed the following conditions: "That the powers of government may be resumed by the people whenever it shall become necessary to their happiness:—That the rights of the States respectively, to nominate and appoint all State Officers, and every other power, jurisdiction and right, which is not by the said constitution clearly delegated to the Congress of the United States or to the departments of government thereof, remain to

the people of the several states, or their respective State Governments to whom they may have granted the same.”<sup>43</sup>

No nation made known her interpretation of the treaty of 1788 in clearer terms than did Virginia, for she published to the world that the powers that she intended to delegate to the federal government might be ‘taken back by her people “whenever the same shall be perverted to their injury or oppression and every power not granted remains with them at their will.”’<sup>44</sup> The Constitution, she said, would have to contain the following words, or words of similar purport: “That each state in the Union shall, respectively, retain every power, jurisdiction and right which is not by this Constitution delegated to the Congress of the United States, or to the Departments of the Federal Government.”

When assured that the treaty would be altered to meet their requirements, the nations that had refused to enter the union became parties to the compact, which was later

<sup>43</sup> *Documentary History of the Constitution of the United States*, vol. ii, p. 311.

<sup>44</sup> David L. Pulliam, *Constitutional Laws of Virginia*, pp. 39-45.

amended in language that is not open to misinterpretation: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."<sup>45</sup>

#### TREATY OF 1788 AS VIEWED BY STATESMEN

Of the five men that Fiske says moulded the confederation of states, Washington, Jefferson, and Madison held that the Constitution was a compact between the states, and that each state was an independent sovereignty.

In a letter to Madison, dated August 3, 1778, Washington used the following words: ". . . till the States begin to act under the new compact." Time and again Washington said that the states were independent nations, their sovereignty unaffected by the treaty to which they were parties.

Said Madison in 1799: "The Constitution of the United States was framed by the sanction of the States, given by each in its sovereign capacity."<sup>46</sup> Mr. Jefferson Davis, in his

<sup>45</sup> Amendments to the Constitution, Art. x.

<sup>46</sup> Edward Payson Powell, *Nullification and Secession in the United States*, p. 102.

splendid book, *The Rise and Fall of the Confederate Government*, reports that Madison also said, "The people—but not the people as composing one great body; but the people as composing thirteen sovereignties," made the compact of 1788 and its amendments.

That the sovereignty of no one of the nations was affected by the federal union Jefferson frequently contended. Gordy reports: "Jefferson's opinion began as follows: 'I consider the foundation of the Constitution as laid on this ground—that all powers not delegated to the United States by the Constitution or prohibited by it to the States are reserved to the States or to the people. To take a single step beyond the boundaries thus specially drawn around the powers of congress, is to take possession of a boundless field of power no longer susceptible of any definition.' "

<sup>47</sup>

President Monroe wrote that two propositions were beyond dispute: "The first is, that in wresting the power, or what is called the sovereignty, from the crown, it passed directly to the people. The second, that it

<sup>47</sup> J. P. Gordy, *A History of Political Parties in the United States*, p. 135.



passed directly to the people of each colony, and not to the people of all the colonies in the aggregate—to thirteen distinct communities, and not to one.”<sup>48</sup>

In *Ware vs. Hylton* (3 Dallas, 224) Justice Chase, of the Supreme Court of the United States, and one of the signers of the Declaration of Independence, in his opinion said: “I consider this a declaration, not that the united colonies, jointly, in a collective capacity, were independent states, &c., but that each of them was a sovereign and independent state, that is, that each of them had a right to govern itself by its own authority and its own laws, without any control from any other power on earth.”

Judson A. Landon, referring to the Declaration of Independence, says: “The thought in the mind of the framers no doubt was that every colony was free and independent of the king. There was no need to say independent of each other; they had always been so, and the idea of erecting a common, central government out of all, was not yet suggested.”<sup>49</sup>

<sup>48</sup> Niles, *Register*, vol. xxii, p. 366.

<sup>49</sup> Judson A. Landon, *The Constitutional History and Government of the United States*, p. 59; quoted by Ewing, *Northern Rebellion and Southern Secession*, p. 12.

As a union is a combination that consists of two or more entities, either an American union or an American nation was formed when the Constitution was adopted. Bear this in mind, if you please, you who spell union with a big U, and who seem to think that "union" means "nation."

Lincoln at the time of his first inaugural address evidently knew the meaning of "union" as well as "nation." In his first inaugural address "union" appears twenty times, but only once was the word "nation" used. Three years later, in his Gettysburg oration, the word "union" is not mentioned, but the word "nation" is used five times. Such is the influence of power. Indeed should the warning of Patrick Henry be heeded: "If your American chief be a man of ambition, and abilities, how easy it is for him to render himself absolute!"<sup>50</sup>

Possibly no human being who has studied the affairs of men ever believed that a sovereign entity ever willingly surrendered her powers. Is it thinkable that Virginia, a nation two hundred years old, with her traditions jealously guarded by her, ever willingly

<sup>50</sup> Wirt, vol. 3, p. 452.

laid down her life, to enter the American hell? One with the intelligence of a boy of ten may not read the reports of the debates on the adoption of the Constitution of the United States without reaching the conclusion that the parties to that compact never intended to create a nation.

Here I yield to the temptation to point out one more defect in the agreement between the American sovereignties. The name of the holding company never should have been The United States of America; but that name should have been The American States United. Possibly, for the benefit of the late Daniel Webster and many of those of his period and of ours, a dictionary should have been made a part of the treaty of 1788. Such words as "state" and "nation" and "union" and "sovereignty" and "delegate" and "reserve" and "power" should have been defined. True, everybody knows the meaning of those words as ordinarily used; but as used in the agreement of confederation they mean everything—or nothing—to nationalists.

#### GOVERNMENT UNDER THE TREATY OF 1788

The domestic affairs of the American na-

tions were not materially affected by the holding company immediately after their compact became operative. Each nation went about her own affairs. As we have already seen, Virginia had a splendid military system as long ago as 1624. She continued to perfect this organisation after she became a party to the compact of confederation. Says Mr. Armistead Gordon, now rector of the University of Virginia, in his admirable *Life of General Fitzhugh Gordon*: "Each county raised a certain number of troops, and because it was not convenient for men to go many miles from home in assembling for purposes of drill, the county was subdivided into military districts, each with its company, according to the rules laid down by the governor." This system therefore was not unlike that which came into being way back in 1624.

"In 1804 the legislature chartered the Bank of Virginia and its branches, and this was the beginning of the Virginia banking system that by 1860 had grown and developed into the most perfect banking system that the world has ever seen."<sup>51</sup>

<sup>51</sup> William L. Royall, *A History of Virginia Banks and Banking Prior to the Civil War*, p. 9.

I again refer to the rise of sectionalism in Virginia. From an early part of the seventeenth century there were sections within sections, and by 1840 the differences between eastern Virginia and western had become acute. In 1840 western Virginians were clamouring for more liberal representation in the Virginian House and Senate, and by 1860 civil war between eastern Virginia and western was threatened. I mention this as an incident in the national development of the old commonwealth. Some day I shall tell you a great deal concerning the war that was about to be fought between eastern Virginia and western at the time the War between the States deprived Virginians of the joy of what would have been an extremely interesting fight.

Not long did the American nations live peaceably under their compact. The rabble, greatly encouraged by the course events had taken, sought to make further mischief. A brigand never becomes a good citizen. The rabble, still the rabble, still highway robbers, would continue to prey upon society. In the name of humanity the rabble had overthrown a kingdom, that a republic might be estab-



lished; in the name of humanity the rabble now intended to overthrow a republic, that a kingdom might be established. Alexander Hamilton, a leader of the rabble that had fought one king, was now the leader of the rabble that fought for a new king. Again the highwaymen were successful. The treaty was their work. Now for another kingdom!

GOVERNMENT UNDER THE SUPREME COURT OF  
THE UNITED STATES

Through the kindness of Mr. Fontaine T. Fox, of the Louisville bar, I am able to quote from his valuable book, *A Study in Alexander Hamilton*, which is now in press. As the book is not yet in pages, I am unable to refer to page numbers.

Says Mr. Fox, "Alexander Hamilton begat the Federal party, the Federal party begat the Whig party, the Whig party begat the Republican party, and these three parties were one and the same yesterday, they are one and the same to-day, and they will be one and the same for ever and for ever. Hamilton's sole object was to create a government outside the federal constitution, and to-day that is the chief object of the Republican party. This new

government was to be made out of the doctrine of 'implied powers.' Under the constructive decisions of the Supreme Court of the United States, which always has been merely the exponent of Hamilton's political opinions, as it is to-day the exponent of those opinions, no restrictions limit the kind of government that may be established under the doctrine of implied powers. John Marshall was the judicial exponent of Alexander Hamilton—no more, no less."

Yet time was when John Marshall was faithful to the nation that gave him birth. That was the time when he had not dreamed his dreams of empire, the time when he held that the states were nations. During the debate on the adoption of the Constitution he used the following words: "Can they [Congress] go beyond the delegated powers? If they were to make a law not warranted by any of the powers enumerated, it would be considered by the judges [Supreme Court] as an infringement of the Constitution which they are to guard. . . . They would declare it void."<sup>52</sup>

But, as Mr. Fox says: "The American peoples through the doctrine of implied powers

<sup>52</sup> Allan Bowie Magruder, *John Marshall*, p. 82.

are living not under the federal constitution, but under the government of the federal supreme court—a government created out of its own imagination, in defiance of the constitution which the judicial oath required it to support and defend. And that court is to-day, as it never has ceased to be, the exponent of Alexander Hamilton's political principles, through John Marshall's judicial decisions, which have been accepted and followed as infallible."

Jefferson was alarmed by the inroads made upon the rights of the nations by the supreme federal court. In his first inaugural address he said: "I deem as an essential principle of our government, the support of the State governments in their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against anti-republican tendencies."<sup>53</sup> No wonder that the Sage of Monticello "wrote a spiteful letter about Marshall which made the latter angry, and he went home to Virginia and ran for Congress against the opposition of Jefferson, who called him 'a monarchist and an unprincipled impudent Federal bulldog.'"

<sup>53</sup> *The Statesman's Manual*, vol. i, p. 151.

“Loose construction had come to mean the right of the federal government to do whatever was forbidden by the Constitution provided the act was deemed to be for the general good.”<sup>54</sup>

Again I quote from the admirable book by Mr. Fox: “How to control if not to get rid of this principle [the personality of man] under the federal constitution was the moral treason of Alexander Hamilton and John Marshall. To create a corporation under the old theory was an act of sovereignty, hence Hamilton advocated a bank, although he knew personally that the power to organise a bank expressly had been denied to the federal government. John Marshall announced that a charter passed by a state government was a contract and therefore was protected by the federal constitution. The next step was to decide that the federal congress had the implied power to create a corporation, and Marshall did so decide. The work was accomplished. The treasonable design of Alexander Hamilton and John Marshall was a judicial success, and the grand work of the American Revolution was undone, and once more in defiance

<sup>54</sup> William MacDonald, *Jacksonian Democracy*, p. 77.

of God and human rights, Man was sunk to a subject and government with its divine right to reign was announced to the world. Consequently the old conflict that has surged through all human history—the conflict between freedom and tyranny—has not yet been settled.”

Under the “elastic” clause of the Constitution of the United States Hamilton and Marshall constructed a government. Let us take a look at that clause, well nicknamed. “To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or office therefore.”<sup>55</sup> Great God, that statesmen ever should have permitted that clause to have become a part of the treaty!

The doctrine of “implied powers” was directly denied to congress by the compact, but was decided by the Supreme Court of the United States to have been granted by implication. In effect, says the Supreme Court of the United States, the compact between the

<sup>55</sup> Art. i, sec. viii, clause 18, Constitution of the United States.



American nations makes this court a despotic monarch and makes a monarchy of these nations. During the session of 1820-1821 the Virginian House of Delegates by a majority of 138 protested against the assumption of jurisdiction of the Supreme Court of the United States in the case of *Cohens vs. Virginia*:

“Resolved, That the Supreme Court of the United States have no rightful authority under the Constitution, to examine and correct the judgment for which the Commonwealth of Virginia has been ‘cited and admonished to be and appear at the Supreme Court of the United States,’ and that the General Assembly do hereby enter their most solemn protest against the jurisdiction of that Court over the matter.”

“This pronunciamiento declared the attitude of the Commonwealth towards what it regarded as an unwarranted assumption of jurisdiction over a sovereign State by the Supreme Court of the United States, then presided over by Chief Justice Marshall. The *Cohens* were indicted by the State Court at Norfolk for a violation of the State anti-lottery statute. The defendants claimed the pro-

tection of an act of Congress relating to the District of Columbia. Judgment went against them; and being without right of appeal to any Virginia court, they appealed directly to the Supreme Court of the United States.”<sup>56</sup>

Too much of your time would be taken were I to further enlarge upon the powers that the Supreme Court of the United States exercised while trying to make a monarchy out of the American sovereignties. Later I shall refer to the court, and then I shall tell you how it became one of the executive departments of the American despot.

#### THE SOUTHERN NATIONS DEFEND THEIR SOVEREIGNTY

Congress neglected few opportunities to lay the foundation upon which was constructed the temple erected to despotism. Seldom did representatives of the southern nations members of Congress fail to do all in their power to prevent encroachment on the rights of the sovereignties that they represented. I shall not enter upon the details of the battles that

<sup>56</sup> Armistead C. Gordon, *William Fitzhugh Gordon, 1787-1858*, p. 128.

were waged in Washington. I shall merely mention a few of the fights.

The position of Virginia with respect to the Missouri Compromise was couched in language that could not be mistaken. I quote from the resolutions adopted by her parliament:

“1. That the Congress of the United States have no power under the Federal Constitution to dictate to the people of the Missouri territory what principles shall govern them in the formation of their constitution or system of government or in the adoption of regulations respecting their property, but are simply bound to guarantee to them (in common with the other States) a republican form of government.

“2. That the Congress of the United States are bound in good faith by the treaty of cession of 1805 to admit the good people of the Missouri Territory into the Union upon equal terms with the existing States.

“3. That the General Assembly of Virginia will support the good people of Missouri in their just rights to admission into the Union, and will cooperate with them in resisting with manly fortitude any attempt which Congress

may make to impose restraints or restrictions, as the price of their admission, not authorised by the great principles of the Constitution, and in violation of their rights, liberty and happiness.

“4. That the Senators from this State in the Congress of the United States be instructed, and the representatives requested, to use their best efforts in procuring the admission of the State of Missouri into the Union, upon the principles contained in the foregoing resolutions, and in resisting any attempt which shall be made in Congress to impose conditions upon the people of Missouri not warranted by the treaty of cession and the Constitution of the United States.”<sup>57</sup>

In a letter to General William F. Gordon, dated January 1, 1826, Jefferson said: “It is but too evident that the branches of our foreign department of government, executive, judiciary, and legislative, are in combination to usurp the powers of the domestic branch also reserved to the States, and consolidate themselves into a single government without limitation of powers. I will not trouble you with details of the instances, which are thread-

<sup>57</sup> Gordon, p. 125-6.

bare and unheeded. The only question is, what is to be done? Shall we give up the ship? No, by heavens, while a hand remains able to keep the deck! Shall we, with the hot-headed Georgian, stand at once to our arms? Not yet, nor until the evil, the only greater one than separation, shall be all but upon us, that of living under a government of discretion. Between these alternatives there can be no hesitation.”<sup>58</sup>

Congress and the Supreme Court did not intend to leave to the nations a single field of human endeavour. But without surcease Virginia resisted the attacks that were made on her sovereignty. Her House of Delegates February 28, 1826, adopted a resolution couched in the following language:

“That the Congress of the United States does not possess the power, under the Constitution, to adopt a general system of internal improvements in the States, as a national measure;” and “that the appropriation by the Congress of the United States to construct roads and canals in the States is a violation of the Constitution.”

On March 2, 1827, the general assembly of Virginia adopted the following resolutions:

<sup>58</sup> Gordon, p. 133.



“The General Assembly of Virginia, actuated as it always has been by the most sincere disposition for the preservation of the Union of these States, believing that the Union can only be preserved by keeping the General and State governments within their respective spheres of action as marked out by the Constitution of the United States; being also sincerely desirous that the General Government should be protected in the full and free exercise of all the specified powers granted to it by the Constitution of the United States, and being at the same time deeply impressed with a sense of its own duty to preserve unimpaired all the rights of the people and government of this State conferred upon it by the Constitution of the State and of the United States, finds itself reluctantly constrained to enter its most solemn protest against the usurpations of the General Government, as described in the Report of the Committee.

“Therefore, Resolved That the General Assembly in behalf of the people and government of this State, does hereby most solemnly protest against the claim or exercise of any power whatever on the part of the General Government to make internal improvements

within the limits and jurisdiction of the several States, and particularly within the limits of the State of Virginia—and also against the claim or exercise of any power whatever asserting or involving a jurisdiction over any part of the territory within the limits of this State, except over the objects and in the mode specified in the Constitution of the United States.

“Resolved, In like manner that this General Assembly does most solemnly protest against the claim or exercise of any power whatever on the part of the General Government to protect domestic manufactures, the protection of manufactures not being among the grants of power to the government specified in the Constitution of the United States; and also against the operation of the Act of Congress, passed May 22d, 1824, entitled ‘An Act to amend the several acts imposing duties or imports,’ generally called the Tariff law, which vary the distributions of the proceeds of the labor of the community in such a manner as to transfer property from one portion of the United States to another, and to take private property from the owner for the benefit of another person not rendering public serv-

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yet the northern and the eastern nations had been violating its terms daily since 1789, when it first became effective. Their oppressions became so outrageous that the southern nations saw that they would be compelled to withdraw from the treaty of 1788 and its amendments, for already the right to exercise many of their powers as sovereignties was denied to them. Long-suffering were the nations of the south, nor had the world before witnessed such forbearance. Nowhere else, save in heaven, had such charity been found.

#### THE NASHVILLE CONVENTION

In June, 1850, the first session of the Nashville convention was held. I shall not enter upon a recital of the important work of that session, nor of the second session, which was convened in November of the same year that the first session was convened. I shall merely note the address to the peoples of the United States that was adopted at the first session, the resolutions being as follows:

“1. Resolved, That the territories of the United States belong to the people of the several States of this Union, as their common



property; that the citizens of the several States have equal rights to migrate with their property to these territories and are equally entitled to the protection of the Federal Government in the enjoyment of that property so long as the territories remain under the charge of that government.

“2. Resolved, That Congress has no power to exclude from the territory of the United States any property lawfully held in the States of the Union, and any acts which may be passed by the Congress to effect this result is a plain violation of the Constitution of the United States.

“3. Resolved, That it is the duty of Congress to provide governments for the territories, since the spirit of American institutions forbids the maintenance of military governments in time of peace; and as all laws heretofore existing in territories once belonging to foreign powers which interfere with the full enjoyment of religion, the freedom of the press, the trial by jury, and all other rights of persons and property as secured or recognized in the Constitution of the United States, are necessarily void so soon as such territories become American territories, it is the duty of

the Federal Government to make early provision for the enactment of those laws, which may be expedient and necessary to secure to the inhabitants of and emigrants to such territories the full benefit of the constitutional rights we assert.

“4. Resolved, That to protect property existing in the several States of the Union, the people of these States invested the Federal Government with the powers of war and negotiation, and of sustaining armies and navies, and prohibited to State authorities the exercise of the same powers. They made no discrimination in the protection to be afforded or the description of the property to be defended, nor was it allowed to the Federal Government to determine what should be held as property. Whatever the States deal with as property, the Federal Government is bound to recognize and defend as such. Therefore it is the sense of this convention that all acts of the Federal Government which tend to denationalize property of any description recognised in the Constitution and laws of the States, or that discriminate in the degree and efficiency of the protection to be afforded to it, or which weaken or destroy the title of any

citizen upon American territories, are plain and palpable violations of the fundamental law under which it exists.

“5. Resolved, That the slave-holding States cannot and will not submit to the enactment by Congress of any law imposing onerous conditions or restraints upon the rights of masters to remove with their property into the territories of the United States, or to any law making discriminations in favor of the proprietors of other property against them.

“6. Resolved, That it is the duty of the Federal Government plainly to recognize and firmly to maintain the equal rights of the citizens of the several States in the territories of the United States, and to repudiate the power to make a discrimination between the proprietors of different species of property in the federal legislation. The fulfilment of this duty by the Federal Government would greatly tend to restore the peace of the country, and to allay the exasperation and excitement which now exist between the different sections of the Union. For it is the deliberate opinion of this Convention that the tolerance Congress has given to the notion that federal authority might be employed incident-

ally and indirectly to subvert or weaken the institution existing in the States confessedly beyond federal jurisdiction and control, is a main cause of the discord which menaces the existence of the Union, and which has well nigh destroyed the efficient action of the Federal Government itself.

“7. Resolved, That the performance of this duty is required by the fundamental law of the Union. The equality of the people of the several States composing the Union cannot be disturbed without disturbing the frame of the American institutions. This principle is violated in the denial to the citizens of the slave-holding States of power to enter into the territories with the property lawfully acquired in the States. The warfare against this right is a war upon the Constitution. The defenders of this right are defenders of the Constitution. Those who deny or impair its exercise are unfaithful to the Constitution; and if disunion follows the destruction of the right, they are the disunionists.

“8. Resolved, That the performance of its duties, upon the principle we declare, would enable Congress to remove the embarrassments in which the country is now involved.

The vacant territories of the United States, no longer regarded as prizes for sectional rapacity and ambition, would be gradually occupied by inhabitants drawn to them by their interests and feelings. The institutions fitted to them would be naturally applied by governments formed on American ideas, and approved by the deliberate choice of their constituents. The community would be educated and disciplined under a republican administration in habits of self-government, and fitted for an association as a State, and to the enjoyment of a place in the Confederacy. A community so formed and organized might well claim admission to the Union, and none would dispute the validity of the claim.

“9. Resolved, That a recognition of this principle would deprive the questions between Texas and the United States of their sectional character, and would leave them for adjustment without disturbance from sectional prejudices and passions, upon considerations of magnanimity and justice.

“10. Resolved, That a recognition of this principle would infuse a spirit of conciliation in the discussion and adjustment of all the subjects of sectional dispute, which would af-



ford a guarantee of an early and satisfactory determination.

“ 11. Resolved, That in the event a dominant majority shall refuse to recognize the great constitutional rights we assert, and shall continue to deny the obligations of the Federal Government to maintain them, it is the sense of this convention that the territories should be treated as property, and divided between the sections of the Union, so that the rights of both sections be adequately secured in their respective shares. That we are aware this course is open to grave objections, but we are ready to acquiesce in the adoption of the line of  $36^{\circ} 30'$  north latitude, extending to the Pacific Ocean, as an extreme concession, upon considerations of what is due to the stability of our institutions.

“ 12. Resolved, That it is the opinion of this convention that this controversy should be ended, either by a recognition of the constitutional rights of the Southern people, or by an equitable partition of the territories. That the spectacle of a Confederacy of States, involved in quarrels over the fruits of a war in which the American arms were crowned with glory, is humiliating. That the incorporation of the

Wilmot proviso, in the offer of settlement,—a proposition which fourteen States regard as disparaging and dishonorable,—is degrading to the country. A termination to this controversy by the disruption of the Confederacy, or by the abandonment of the territories to prevent such a result, would be a climax to the shame which attaches to the controversy which it is the paramount duty of Congress to avoid.

“13. Resolved, That this convention will not conclude that Congress will adjourn without making an adjustment of this controversy; and in the condition in which the convention finds the questions before Congress, it does not feel at liberty to discuss the methods suitable for a resistance to measures not yet adopted, which might involve a dishonor to the Southern States.”

NORTHERNERS, EASTERNERS AND WESTERNERS  
PETITION CONGRESS TO DISSOLVE THE UNION

Apparently disunion was at hand. Petitions to both houses of congress asking for a dissolution of the confederation were received from citizens of nearly all the nations parties to the compact. There were petitions

from citizens of Pennsylvania, from citizens of Delaware, from citizens of Ohio, and from citizens of the New England nations. On February 1, 1850, Mr. Hale of New Hampshire presented to the Senate petitions praying for the dissolution of the union, and Seward of New York and Chase of Ohio voted for their reception, as did Hale. The northern nations had not the least desire to remain parties to a contract when that contract threatened their pockets.

The southern nations were becoming powerful commercially. In these days we hear many persons say that the southern nations had no commerce. They were among the large producers of manufactured articles, and their wealth in nearly all the industries of the time was prodigious. In agricultural products they probably led the world. They were about to make all their own cotton into fabrics. Whereupon their northern sisters said, We had better part.

I shall say but little about the southern confederacy. But I wish to speak of a few of the breaches made in the rampart that was intended to protect the American nations—breaches made long before the great breach

was made by the southern sovereignties. To please our northern friends, I shall speak of these breaches as being the work of rebels.

#### NORTHERN, EASTERN, AND WESTERN REBELLIONS

In 1791, soon after the treaty was made effective, the first rebellion was fought out. The name "Whiskey Insurrection" was given to that war of generous proportions—for a war it was, and of magnitude conceived by few. The good people of Pennsylvania were the rebels. A tax had been levied on a commodity dear to the Pennsylvanian's heart—indeed, his head also was affected, for the commodity was a fluid not altogether unknown to Virginians. The president of the United States called out the federal troops, and for four years the authority of the United States was defied. Three counties alone of the rebel nation sent 11,000 men to the field, and Ewing tells us that the "movement was not suppressed until President Washington called for 75,000 troops, and sent Governor Lee, of Virginia, against the rebels." <sup>61</sup>

Mr. Ewing also tells us that there "can be

<sup>61</sup> E. W. R. Ewing, *Northern Rebellion and Southern Secession*, p. 30.

no doubt that from 1803 to perhaps 1814 New England furnishes some of the boldest secession and rebellion projects having the least justification which the history of our country affords." John Quincy Adams while president of the United States wrote quite an interesting letter. The epistle bears date of December 20, 1828, and in it he says: "It was . . . in 1808 and 1809 that I mentioned the design of *certain leaders* of the Federal party to effect a dissolution of the Union and the establishment of a Northern confederacy. This design had been formed in the winter of 1803-'04, immediately after, and as a consequence of, the acquisition of Louisiana. Its justifying causes to those who entertained it were: That the annexation of Louisiana to the Union transcended the constitutional power of the government of the United States; that it formed, in fact, a new confederacy, to which the States united by the former compact, were not bound to adhere; that it was oppressive to the interests and destructive to the influence of the Northern section of the confederacy, whose right and duty it was, therefore, to secede from the new body politic and to constitute one of their own. The plan



was so far matured that the proposal had been made to an individual to permit himself, at the proper time, to be placed at the head of the military movements which, it was foreseen, would be necessary for carrying it into execution.”<sup>62</sup>

But I was about to overlook that lovely rebellion, that thing of beauty, that creature now a fancy in New England, known as the Hartford Convention. During the course of his duty, the president of the United States called upon each of the nations to supply soldiers for the War of 1812. “This at once gave occasion for a fresh outburst of this rebellious spirit. Not only was it [not] confined to individuals, but it reached as well the highest officials of the New England States. Massachusetts refused to obey; Connecticut refused to send her citizens in response to the Federal call; Rhode Island stood firm on her State-rights and asserted her sovereignty. Each defied the Federal Government, and refused to rally to her flag; each insisted that she was not bound to obey unless she felt it to the interest of the citizens of her State to do so. During this opposition to the United States in

<sup>62</sup> Henry Adams, *New England Federalism*, p. 52-3, quoted by Ewing, p. 32.

the War of 1812, 'A large meeting in Boston declared the act [an embargo on shipping] arbitrary and unconstitutional, and that all who assisted in carrying out the law should be regarded as enemies of the State and as hostile to the liberties of the people.' 'The Government of Massachusetts refused to submit [to the demands of Congress], and the authorities of the latter State passed a law for raising a provisional army of two thousand for 'special State defense,' of which one of her own citizens was made commander. (Am. State Papers: Misc., v. II., 186; Adams, New Eng., Fed., 297.) And ever ready to appeal to religious convictions for support, the Massachusetts Legislature refused to extend a vote of thanks to Capt. Lawrence for the capture of the *Peacock* because that august body said 'it was not becoming a moral and religious people' to approve the course of the United States at that time!

"The burdens of the war fell heavily upon them, yet they did not have such a love for the United States, as a nation, as to be willing patiently to wait the rifting of the war cloud; they loudly protested that the interests of the people of their several States were first,

paramount,—and second and last, the national interests. They argued that they had entered the Union and had temporarily suspended their sovereign independence to facilitate State success, and that they had a right to determine when individual State happiness was jeopardized.<sup>1</sup> In the Hartford Convention, which met in 1814, Connecticut, Rhode Island, New Hampshire, and Vermont were more or less largely represented. As a result of their deliberations, they came forth in what was called the REPORT, in which, among other things, they made the following declaration:

“ ‘In case of deliberate, dangerous, and palpable infractions of the Constitution, AFFECTING THE SOVEREIGNTY OF A STATE AND THE LIBERTIES OF THE PEOPLE, it is not only the right, but the duty of such State to interpose its authority for protection in the manner best calculated to secure that end.’ And they declared that when cases arise which jeopardize the happiness and peace of the citizens, States ‘must be their own judges and execute their own decisions.’ ” <sup>63</sup>

<sup>63</sup> Ewing, p. 33-4.

I shall not trace the progress of the events that occurred between 1850 and 1860. But, in passing, let me say that the northern nations evidently believed that they could exploit the southern nations time without end in the manner that they had exploited them in the past, provided that the union of the nations should not be dissolved. Again the Yankee knew what he was about. From Apomattox to this minute the northern nations have fleeced the southern nations as no other peoples of the world ever have been sheared. My friends, this I say to our shame. Meek humility may become the crime of suicide. But more of this later.

### III

## THE AMERICAN ABSOLUTE MONARCHY

FROM 1865 TO 1910

THE genesis of the southern treaty was similar to the genesis of the treaty made between the American nations in 1788, which treaty was the result of the desire of its parties to form an alliance to protect them from invasion and to regulate their relations with one another and with other sovereignties. The compact of confederation that existed between the southern peoples did not make a single nation of them. The southern countries were to fight the greatest war of modern days,—a fight to the death, that their sovereignty might be preserved, that they might continue to be an nations,—hence the southern confederation would have been peaceably dissolved upon the successful termination of the war, although later the nation's parties to the compact of confederation



doubtless would have entered into a treaty with one another similar in its various provisions to the compact of 1788 and its amendments, which was the basis of their compact of union. The new treaty would have defined the relations of the nations to one another, and to other nations; but that instrument would not have affected the sovereignty of any party to the agreement. To hold that a nation was formed of the southern peoples would be equivalent to holding that the southern nations did not know why they were to fight.

THE CONFEDERATE STATES OF AMERICA A  
TEMPORARY CONFEDERATION

Never spell the southern section of this continent that once consisted of sovereign countries with an initial capital letter. There never was a "South" in America. The Confederate States of America, a temporary association, was an agreement between sovereignties. The words in which that agreement was written never were intended to mean that sovereignties would be merged into a single nation.

Please pardon this brief digression. I wish to say that the proper title of the war that

was fought between 1861 and 1865 is, the War between the American States; or, the War between the American Nations. There was no Civil War, there was no War of the Rebellion; there was no War between the United States of America and the Confederate States of America; there was no War between the North and the South; but there was a war between American sovereignties, in which the nations were divided into two sets of allies.

To show you how jealously the parties to the southern confederation guarded their rights, I will quote from the letters that passed between the war governor of Georgia, Joseph E. Brown, and the confederation's secretary of war, James A. Seddon. When Georgia was invaded by General Sherman, Governor Brown raised an army to resist the invaders. Whereupon Secretary Seddon, in obedience to the instructions that he had received from President Davis, made requisition on the governor for his entire army. Here in part is the governor's answer to the secretary:

“I have an organization of gallant, fearless men, ready to defend the State against usurpations of power as well as invasions by the

enemy. . . . Her militia have been organized and called into active service under her own laws for her own defence, and I do not feel that I am authorized to destroy her military organization at the behest of the President, or to surrender to him the command of the troops organized and retained by her by virtue of her reserved power for her own defence when greatly needed for that purpose, and which are her only remaining protection against the encroachments of centralized power. I therefore decline to comply with or fill this extraordinary requisition. . . . And if you will not consider the remark acrimonious, I will add that the people of my State, not being dependent, and never intending to be, upon that government for the privilege of exercising their natural and Constitutional rights, nor the Executive of the State for his official existence, I shall on all occasions feel at liberty to exercise perfect independence in the discharge of my official obligations, with no other restraints than those thrown around me by a sense of duty, and the Constitution of my country, and the laws of my State.”<sup>64</sup>

That great and good man Jefferson Davis,

<sup>64</sup> Fielder, *Life and Times of Joseph E. Brown*, pp. 318-335.

who, posterity will say, belongs to that small band of men of which are Alexander, Cæsar, Hannibal, and Bonaparte,—and I say that despite the opinions to the contrary of many persons who fought for the cause for which their great leader would have given his life, even as they offered theirs to heaven or to hell, —I was going to say that the war would not have lasted three months had Jefferson Davis been willing to invade the lands of sovereign powers. The battle that was waged in the soul of that great man was greater than any that you fought, Soldiers of the Eighth Virginia Regiment, or by your comrades that now sleep about us beneath their white “silent tents.” Peace was at hand, the sovereignty of all the nations assured, but Jefferson Davis would not follow the Mississippi to her source, for he would have been obliged to enter the dominions of sovereignties. Jefferson Davis made a mistake; but we Virginians like men that make mistakes of that kind.

VICTORS AND VANQUISHED NEVER MATE

The irascible John Randolph of Roanoke once said: “I do not recall a single instance of cordiality between reconciled friends.”

Some day those who have not read the writings of the "lunatic" of southwestern Virginia should lay aside Shakespeare for awhile, then take up the writings of John Randolph of Roanoke. What would the old "lunatic" have said had he been told that in the days that were to come—these days—that the peoples of the north, hating the people of the south for more than three centuries, should profess for them a most ardent love? Has a victorious people ever loved the people that they vanquished? Has a vanquished people ever loved the people that vanquished them? Come, while we are among ourselves, let us admit that we hate our enemies, and also let us admit that we know that they are still our enemies. During the last past twenty years I have travelled in all the southern communities that once were nations, and I have had excellent opportunity to study them closely; I was born in Virginia, received a part of my education there, and lived there during my boyhood. For the last past eighteen years I have lived in the city of Washington, or in the city of New York, and during those years I have travelled in the north, the east, the west, as well as in the south. I say, with de-



liberation, that the hatred of those of the north toward those of the south is an hundredfold greater than those of the south toward those of the north. There is a reason. The injured never hate those that injure them so much as the injurers hate those that they injure. Yes, O Shade of the Mighty "Lunatic" of Roanoke, if your spirit be about this battle-ground, the "cordialty" that exists between them that live north and them that live south of the Potomac river is of the kind that would have brought from your "crazy" brain an immortal expression.

The war over,—apparently over,—you, Soldiers of the Eighth Virginia Regiment, when you laid down your arms, were told that your country should have all the powers of sovereignty, save one: she should not be permitted to withdraw from the treaty of 1788 and its amendments. Not long after that promise was made to you one of the victors, Mr. Chief Justice Chase, hastened to assure you that the disastrous ending of the war did not take from the southern nations their rights as sovereignties. In one of his great decisions—Texas vs. White—he said: "The Constitution of the United States in all its provisions looks

to an indestructible union of indestructible states." By "states" he did not mean sections of a single country, but he used the word "states" in the sense in which it has been used from the time that it became a part of our language until a few years ago, when the people of this monarchy began to say that the meaning of "states" as it was known for centuries is archaic, that "states" now means sections of a country. Now we speak of the "nations" of Europe and the "states" of America.

JOHN MARSHALL LEFT BUT LITTLE OF THE CON-  
STITUTION FOR OTHERS TO DESTROY

But Mr. Chief Justice Chase was not the whole Supreme Court of the United States. As I have said, the members of the highest tribunal of the American monarchy were merely the minions of the American despot. From the time that the shade of Alexander Hamilton first hovered above the heads of the members of the Supreme Court of the United States until the time that the American monarchy was firmly established, the opinions of the highest judicial body under the federal government all were designed to

extend its own jurisdiction or to maintain its own despotic powers. The opinion of Mr. Chief Justice Chase was to be disregarded by his court.

Probably the most outrageous of the jurisdictional opinions was the one in which the "fiction of the law" was expanded until that "fiction" became this "truth"—that a corporation is a citizen of the state to whose laws the corporation owes its existence. The "nigger in the wood-pile" could be seen by all, of course. Little did the court care for that, for long since the Supreme Court of the United States was lost to shame. The object of the court was effected: corporations were enabled to remove their suits to federal courts. Thus the last vestige of power was stripped from the tribunals of the states. As I have said, the state tribunals became the lowest courts of the new monarchy. They would have been made so by the decision to which I have just referred had they not already been *nisi prius* federal courts.

Again, in the language of Mr. Fox's admirable book:

"Before quoting from Justice Gray's most remarkable opinion in *Millard vs. Greenman*

(vol. 110, U. S. R., page 421), in many points possibly the most remarkable ever given to the country by the Supreme Court of the United States (it goes to the very verge of pronouncing the rights of the States and their citizens as merely spontaneous and unmerited gifts of the federal government, which that government has the right to withhold at any time, or to prohibit the enjoyment and exercise thereof at its discretion), I quote three articles of the Constitution itself. . . . 'No question [says Justice Gray] of the scope and extent of the implied powers of congress under the Constitution can be satisfactorily discussed without repeating much of the reasoning of Chief Justice Marshall in the great judgment in *McCullough vs. Maryland* (4 Wheat., 316), by which the power of congress to incorporate a bank was demonstrated and affirmed.' Nevertheless the Constitution does not enumerate, among the powers granted, that of establishing a bank or creating a corporation. Chief Justice Marshall did not demonstrate—nor could demonstrate—that congress under the Constitution had the power to create a bank or any other corporation, for that power was positively refused to congress by a very large

majority. . . . This statement by Justice Gray is a perfect illustration of the intellectual cowardice and moral slavery of the court to Hamilton's and to Marshall's political opinions . . . Mr. Justice Gray makes this quotation from the chief justice's opinion in the *McCullough vs. Maryland* case: 'Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited but consistent with the letter and spirit of the Constitution, are constitutional.'"

John Marshall indeed left but little of the Constitution of the United States for others to destroy. If a schoolboy of any part of this monarchy were asked to name the most infamous of all American traitors he probably would mention the name of Benedict Arnold, a New England man. If I were asked that question, in reply I should name John Marshall, a Virginian, than who no greater traitor has lived since the time of Judas Iscariot. There have been men who by treachery have destroyed several nations; but I venture to say that John Marshall by treachery has destroyed more nations than any other man of



recorded time. Not by the armies of Sherman and Grant was the Constitution of the United States destroyed, but by the political opinions of Alexander Hamilton judicially rendered by John Marshall.

Indeed has Patrick Henry's prophecy been fulfilled. Said that great statesman: "We drew the spirit of liberty from our British ancestors: by that spirit we have triumphed over every difficulty. But indeed, sir, the American spirit, assisted by the ropes and chains of consolidation, is about to convert this country into a powerful and mighty empire."<sup>65</sup> Again, was he wrong on the ninth day of June, in 1788, when he thundered out this question: "Will not absolute despotism ensue?"

#### THE TENTACLES OF THE AMERICAN DESPOT

All in Virginia know that *Maryland, My Maryland!* recently has been made over—into one of the patriotic songs of the American monarchy. The pupils of the public schools of the nation who breathed and burned, but who did not come, are to be taught the new song. Possibly the politics of the American

<sup>65</sup> Wirt, p. 446.

monarchy is not taught in the public schools of the City of Baltimore as yet.

But in the City of New York studies in the politics of the American monarchy and studies in her patriotism now are begun in the kindergarten. Here is the first lesson of a long course in each of those studies, for this one lesson combines politics and patriotism. The lesson is entitled *Our Flag*. Even now I can see the dear little boys and girls salute the Stars and Stripes, and even now I can hear them earnestly intone this chant: "I pledge allegiance to my flag and to the Republic for which it stands. One nation, indivisible, with liberty and justice for all." There are not even state lines to separate the communities that form the American monarchy—not if the teachings of the public schools of the City of New York be true. "One nation, indivisible,"—is the American monarchy whose institutions the pupils of New York City are taught to revere.

Yet, no one of the communities that compose our monarchy is more jealous of her rights than is New York state. We recently read that a South Carolinian legislative body by a vote of one hundred to three declared

that South Carolina no longer desired to resist the encroachments of the federal government; but no New York legislative body will vote to surrender to the federal government such powers of sovereignty as New York may now have left to her. There are other communities north of the Potomac that will vote against the proposed income tax amendment, I think. Few of the people of the state of New York know that the federal government is teaching their children that New York as a community no longer exists. Yet the despot that is now on the American throne has his agents in every community in this land—those agents by their influence controlling the public instruction of each community.

Whence this great force, this organisation that is so powerful as to be all inclusive? Federal patronage, is my answer. During the year 1909 there were 370,065 persons on the federal pay roll exclusive of the new census force, as against 306,141 in 1907, an increase in two years of about 64,000 persons, or about twenty per cent. No federal employee would long retain his office if he gave expression to a belief entertained by him in the right of the communities to govern themselves in accord-

ance with the terms of their compact of confederation. Those minions of the despot, like the tentacles of some huge octopus, are everywhere, and in the clutch of each tentacle is to be found a schoolteacher. The minions control indirectly—where they do not directly control—well-nigh every department of government of the American communities.

The American despot may select the members of his Congress—and he does. He may “break” congressmen as well as make them—and he does. He may make as well as “break” the officers of the federal courts—and he does. Indeed is the American ruler a despotic monarch absolutely controlling every department of the American government.

#### A “DEMOCRAT” SEEKS THE AMERICAN THRONE

So far all the American monarchs have been Republicans, but the right to the throne of each was bitterly contested by a “Democrat”—by one who, had he been permitted to ascend the throne, would have been as ruthless as Nero in wielding the powers of an absolute despotism.

In a speech that this demagogue recently made in Chicago he actually contended that

the larger unit has a right to control the smaller unit. In commenting on this speech *The Houston Post* says:

“The proposition that the larger unit has a right to control the smaller unit is in conflict with not only every principle of Democracy, but with the federal Constitution itself, and if any attempt were made to assert it the country might be thrown into a furor scarcely less intense than that which once involved the states in civil war. . . . The doctrine of centralization or the federalism of Hamilton never included, so far as we know, such an extreme assertion of the right of the majority to strangle the rights of minorities, either individually or as political entities.”

Even *The New York Tribune*, commenting on the Chicago speech and on *The Houston Post's* views, is moved to say:

“The will-of-the-larger-unit theory is sound enough when applied to the subdivisions of a state which are not federated in order to form a limited political sovereignty. The authority of a state is paramount in every county, city and township within its limits. But the power of the nation over the state is not unconditional. It is strictly defined and



narrowed by the terms of the federal compact, and it is an extravagance to say that, simply because a majority in Congress favors national prohibition, laws can be passed which will forbid a state to sanction the manufacture or sale of liquor within its borders."

To think, that from *The New York Tribune!* One of the important newspapers of New York, a newspaper that for many years has been immensely influential in Europe as well as in America, in a leading editorial article refers to the Constitution of the United States as "the federal compact," and yet a legislative body of South Carolina by a vote of one hundred to three says that the compact of 1788 and its amendments made a nation which they are now willing to have ruled by a despot.

I shall again quote from *The New York Tribune's* leading editorial article of June 8, 1910, thus:

"For a professed disciple of Jefferson Mr. Bryan has advocated some curiously nationalistic policies. In proposing that the federal government should own and operate all the instrumentalities of interstate commerce he committed himself to a startling experiment

in centralization. He favored dwarfing the states and giving a gigantic grant of power to the nation. In his last suggestion he has gone even further. He has practically wiped out state lines by proposing that the will of a mere majority in Congress shall be competent to determine how the states shall employ their police powers and manage their purely domestic concerns. He has become an extra-Hamiltonized Jeffersonian."

Yet this man Bryan, who three times has sought to be America's despot—who still intends to become America's despot—receives the electoral votes of all the southern communities that once were nations, and that once fought that the nations might ever be sovereign. At the same time the electoral votes of all the other communities are cast for men that would be less despotic than Bryan. Under his leadership the southern communities have said that they wish the American despot directly to tax their incomes; they have said that they no longer wish to exercise any power of sovereignty. "Home rule? We want the rule of a despotic sovereign!" they cried aloud. Virginians, to our shame I say, had it not been for the com-

munities that as nations defeated us, this day our common carriers would be operated under the direction of a monarch, and all your affairs would be directed by an absolute power wielded by a single man.

The Virginian that this man who aspires to be a despot claims to admire above all other men, held that men were not to be governed, that the purpose of organised society was to prevent men from preying upon one another. Nevertheless, the man that would be a despot at the time that he professes to be a follower of the Virginian that he hails as master, would take from all American human beings their natural rights as well as those acquired. He would form the tastes of every man and of every woman in this monarchy. He would deny to every man and to every woman every human right. That is the kind of ruler that the south wants and whom the north and the east and the west will not tolerate.

The rights of those that live in the south must not be left wholly to the direction of the persons that once constituted the peoples that they fought. This man Bryan—no southerner—would take from the southern communities the little wealth and power

that they have left to them. I thank God that no southern blood flows through his veins.

#### THE SHAME OF SOUTH CAROLINA

Let our total destruction be brought about by our natural enemies, not by ourselves. This man Bryan, hearing that the legislators of South Carolina would defeat by an overwhelming majority the proposed income tax amendment, addresses those legislators in a speech,—thus interfering in the domestic affairs of South Carolina,—and lo! South Carolinians again harken to his voice. By a vote of one hundred to three they agree that those who once were the inhabitants of a proud nation should have the last vestige of their sovereignty taken from them.

Virginians, are we also to say that we wish to become slaves? I hear that an attempt is again to be made to force Virginia to adopt the proposed income tax amendment. If that attempt succeeds, then indeed will Virginia have fallen from the high estate that once was hers. I appeal to you, Virginians,—as bone of your bone and blood of your blood I appeal to you,—do not let so infamous an outrage be perpetrated upon you. Drive out

of this old commonwealth the false leaders of her people, be they Nebraskans or Virginians, and resume the place that you once held among proud nations. To-day your hearths are in danger—as they were not in danger in 1861. To-day you are to say if your children and your children's children are to be slaves. I do not speak in mere figures of speech. A real slavery is threatened—a bondage of mind and of body. Civilisation can not endure under any government that does not recognise the principles of home rule, and practice those principles.

Under the form of federal confederation that our fathers intended to establish, the human race in America would have been capable of its highest development. To become higher types of man the peoples of the world may not be amalgamated. To the contrary, degeneration would certainly be the result of amalgamation. Provincialism and sectionalism are necessary to a high development of mankind. Home rule may not be too elastic, but should stretch from the family life to the life of the nation,—yes, even to the life of the world, including all nations.



THE PEACE COMMISSION

In these days we witness the attempts that are being made in all parts of the world to break down the borders that separate the nations one from another and to make of the peoples of the world one vast nation. The people of the new nation are to think alike, they are to dress alike, and all their acts are to spring from one process of thought. The Peace Commission threatens the human race. War is not an unmitigated evil. But whether we desire perpetual peace or not, the object of the Peace Commission is not alone to make wars among nations impossible, but to bring about the amalgamation of all the peoples of the world. If I be mistaken, if the principal object that the peace commissioners wish to attain is not the creation of a single nation, to be made of all the nations of the earth, still, I say, the work of the Commission may effect the amalgamation of all the nations of the earth; and may reduce all men, by stages of degeneration, to mere barbarians. In the Peace Commission I see a cloud in the horizon that already has reached ominous proportions. Already I see that the first page

of another federal compact, similar to that of 1788, has been written.

But whether you be a federalist, or one who contends that the highest form of government is to be found where home rule prevails, you must admit that the way to make a nation of the American peoples was not through the methods by which this monarchy was made—you must admit that the peoples of the American nations should have formed that monarchy in the manner provided by the treaty of 1788 and its amendments. In that compact of confederation there is no clause that provides for the compact's amendment by its ruthless destruction.

The Constitution of the United States has been torn up by a few persons while the American peoples slept. Indeed, the people of the American monarchy are yet asleep. When they awake after their long slumber, as did Rip Van Winkle of old, they will find that they are slaves under a despotism more powerful than any other that the world has ever known.

Thus, Soldiers of the Eighth Virginia Regiment, the victorious nations violated the terms of surrender by which you were induced

to lay down your arms—before the ink dried on the paper that contained those terms. I shall not recall the details of the outrages that have been committed upon the defeated nations by the victors, for those details are indelibly written on the memory of each Virginian—written in blood, then burned into memory by countless fires. So I shall not relate the horrors of the War of Reconstruction in detail; nor shall I trace in detail the growth of the American monarchy; but I shall ask you to consider several of countless outrages that have been committed by the victors upon their defeated foes. I refer to these because they are existing evils,—continuing outrages,—which cause me to tremble with indignation and shame as I utter these words.

#### INDEMNITY BY PENSION LAWS

First I shall refer to the infamous pension laws now in force, by which laws the vanquished have been forced to pay to the victors an indemnity amounting to billions. While all the American sovereignties fought out a great war in order that a question arising under the interpretation of the treaty to which they were parties might be decided, yet the

defeated nations in pensions alone have been required to pay out billions to their victors. Even now the defeated peoples are paying millions annually as indemnity in pensions.

It is a pitiful sight as well as a shameful, to see those old veterans of the defeated nations yearly pay tribute to the men that they fought fifty years ago.

The defeated nations were right in their contention that as sovereignties they could withdraw from the treaty of 1788 and its amendments, for they had reserved that right to themselves; but the force of might made right, so the victors, in violation of the terms of surrender, seized all the right that might gave to them. Not only were the vanquished made to pay billions in pensions to those that they had fought, their widows and their minor children, but they were made to pay fully three times as much more in pensions to those that they had not fought, and their widows and their minor children. Every dollar of indemnity—save for a small amount paid to negroes—was spent beyond the lands of the defeated nations, and not one penny of all those enormous payments was returned to the defeated peoples. Moreover, unless the pen-

sion laws are changed, the posterity of the men that fought for the southern nations will continue to pay pensions during the next fifty years or more.

Has any victorious people other than those who fought against the southern countries ever so horribly mutilated a fallen foe? I contend that the peoples of the defeated nations should have received the same pension benefits as did the victors—from Appomattox to the present day. A new pension law should be enacted without loss of time, and that law should provide that the soldiers of the southern nations, their widows and their minor children, during the future should receive the same benefits as the soldiers of the northern nations, their widows and their minor children. Furthermore, the new law should provide that the soldiers of the southern nations, their heirs or their assigns, should receive as much as the soldiers of the northern nations, their heirs or their assigns, have received. Until such a law is enacted I shall advocate this cause—so long as I live.

To think of the immense amount of money that would be circulated in the south if such a law were enacted! Yet, my friends, such



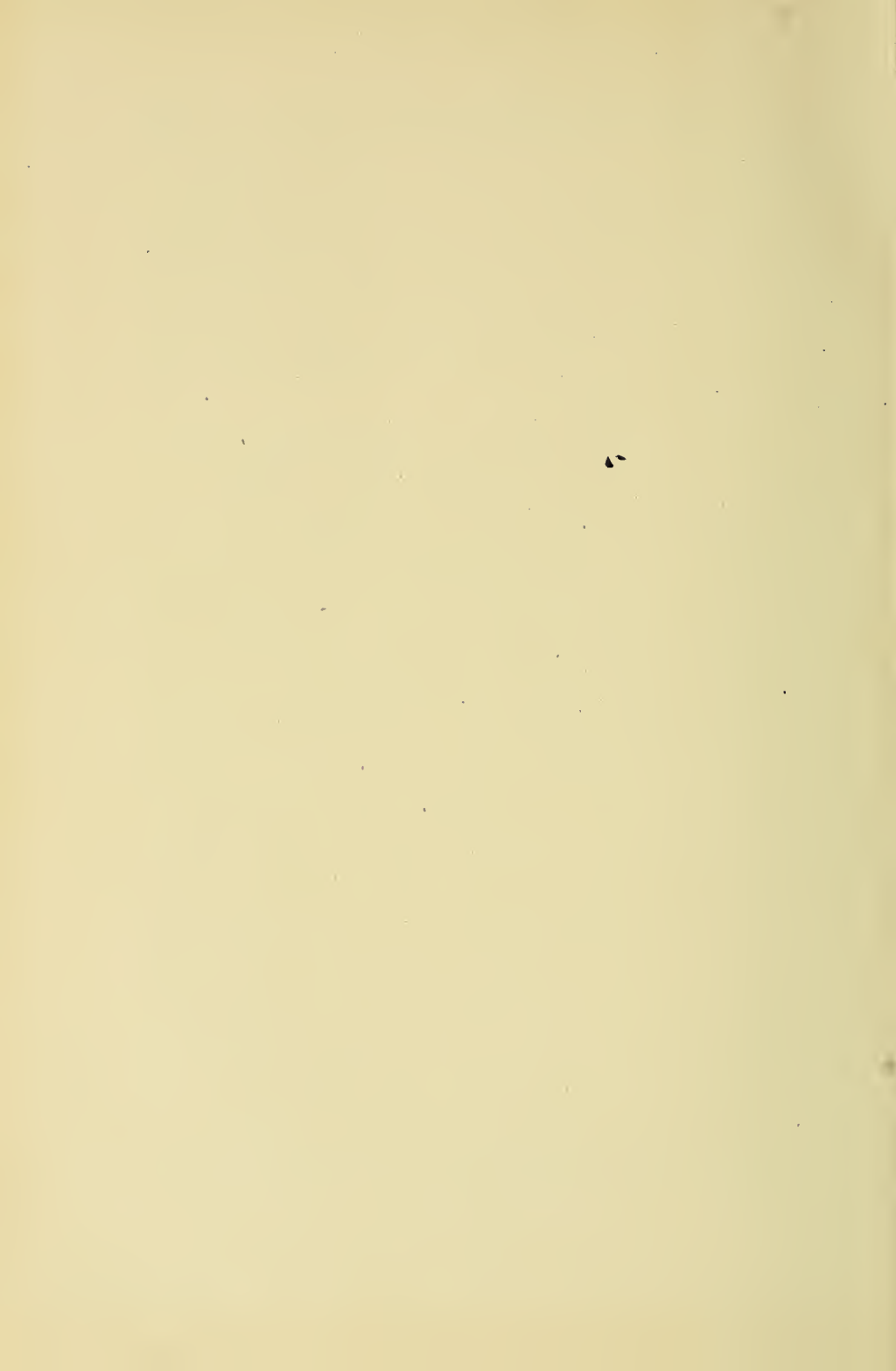
an immense sum divided among southerners would not make them nearly so wealthy as the people of the other part of this monarchy. Why? The devices of the victors by which they took the frugal earnings of the vanquished from them were not limited to the pension outrages.

#### INDEMNITY BY TARIFF LAWS

For half a century the southerner communities have been forced to bear burdens of taxation under a tariff more outrageous than I have words to describe. The industries of the south have been stifled, the fields of the south have been laid bare,—that northern industries might be built up. The infernal tariffs of the last past fifty years have really constituted indirect income taxation levied upon all southerners. Scornfully do the victors revile us. They say that we of the south are poor. But they do not say that they steal from us the little that they permit us to earn—now by tariff laws, now by pension laws, now by legislation so varied that for want of time such federal enactments may not be discussed in this oration. Some day a more humane tariff may be enacted. May Almighty God so touch

the hearts of those who have held us in commercial bondage for more than a century, that they may have pity on us, that their hearts may be melted by the tears of widows and of orphans, and that they may cease to fatten on our poor bodies! Indeed have we suffered at their hands.

Soldiers of the Eighth Virginia Regiment, again I say, the war is not over. Here, on the battle-ground that is hallowed by the ashes of your fallen comrades, I again ask you to take up the arms that you laid down at Appomattox, that you fight without ceasing, until southerners again enjoy the rights so long denied to them. You and your children must not die slaves.

















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